Reference: ES/I&M/ED/1/22/S247

PROPOSED STOPPING UP

of

HIGHWAY AT QUEENS GROVE, NW8 6JD

SECTION 247 OF THE TOWN AND COUNTRY PLANNING ACT 1990

IN RESPECT OF A LOCAL INQUIRY TO BE HELD ON 19 NOVEMBER AT

Swiss Cottage, Central Library, 88 Avenue Road, London NW3 3HA

EVIDENCE BUNDLE

ON BEHALF OF WEI-LYN LOH (INTERESTED PARTY/PROMOTER)

Application ref: 2020/3796/P
Contact: David Peres Da Costa
Tel: 020 7974 5262
Email: David.PeresDaCosta@camden.gov.uk
Date: 3 March 2021

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

TJR Planning
Suite 3 The Mansion
Wall Hall Drive
Aldenham
WD25 8BZ

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Householder Application Granted Subject to a Section 106 Legal Agreement

Address:
73-75 Avenue Road
London
NW8 6JD

Proposal:
Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).
Drawing Nos: A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and

Country Planning Act 1990 (as amended).

2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the London Borough of Camden Local Plan 2017.

3 The development hereby permitted shall be carried out in accordance with the following approved plans:

A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

Reason: For the avoidance of doubt and in the interest of proper planning.

4 Noise mitigation

Before the first operation of the generator hereby approved, the generator shall be provided with sound attenuation measures in accordance with the recommendations set out in the Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020 hereby approved. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy A1 and A4 of the London Borough of Camden Local Plan 2017.

5 Noise from emergency generators

Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

6 Emergency generator operation

The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

7 Emergency generator testing

Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

8 Tree protection / supervision and monitoring

Prior to the commencement of works on site, tree protection measures shall be installed and working practices adopted in accordance with the arboricultural impact assessment by ArborTrack Systems Ltd entitled "Method statement for the avoidance of physical damage to roots during boundary wall demolition & construction at 73-75 Avenue Road London NW8 6JD" dated 14th July 2020. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with BS5837:2012 and with the approved protection details. The works shall be undertaken under the supervision and monitoring of the retained project arboriculturalist and with ongoing consultation with the Council's Tree and Landscape Officer.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the Camden Local Plan.

Informative(s):

1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).

2 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106

agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

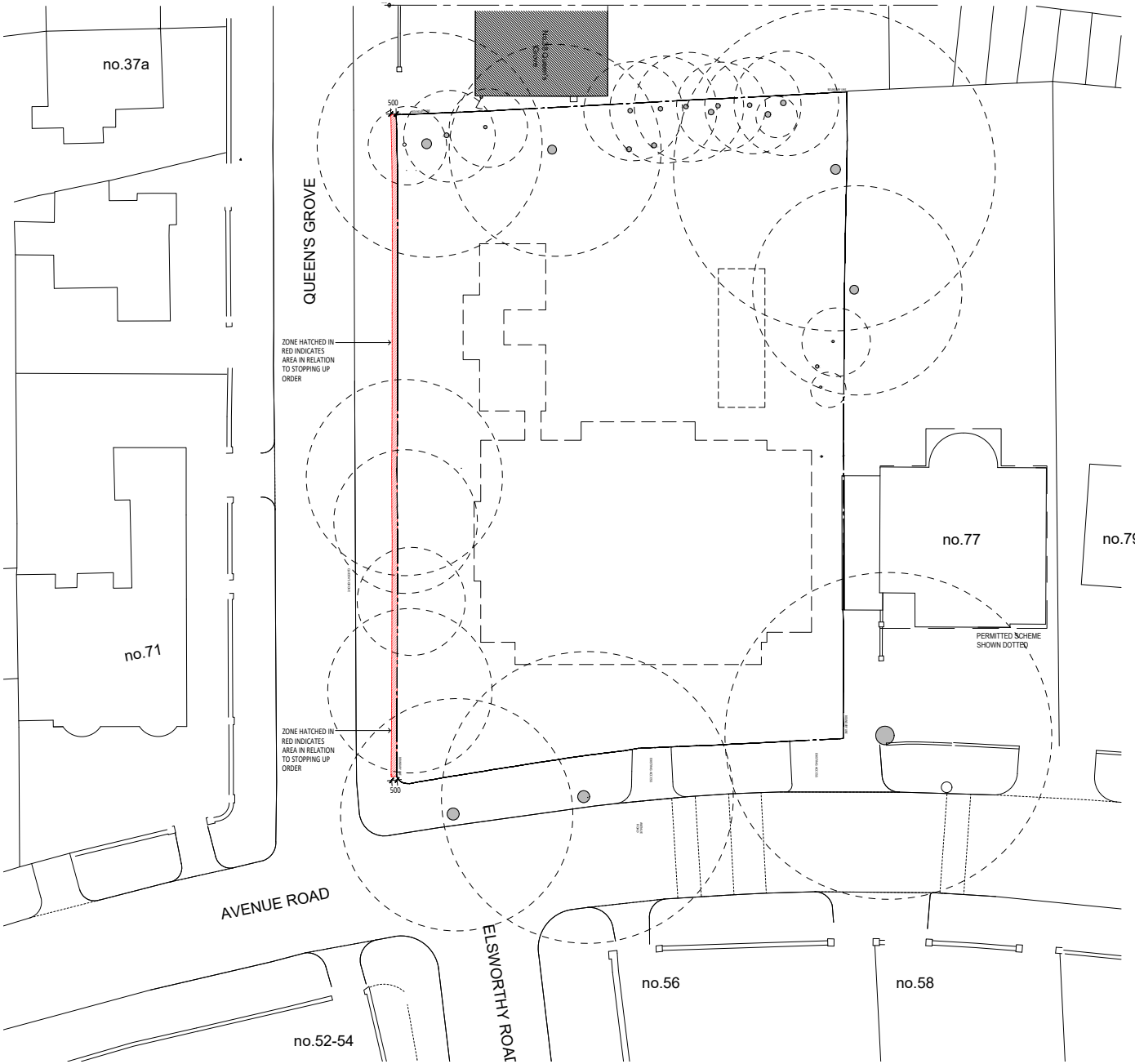
Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:
http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent

Yours faithfully

Daniel Pope
Chief Planning Officer



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PLANNING ISSUE

Notes

GRAPHIC SCALE
0 5 10 15 20

Rev	Date	Issuer	Notes
P1	18.11.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
PROPOSED SITE PLAN

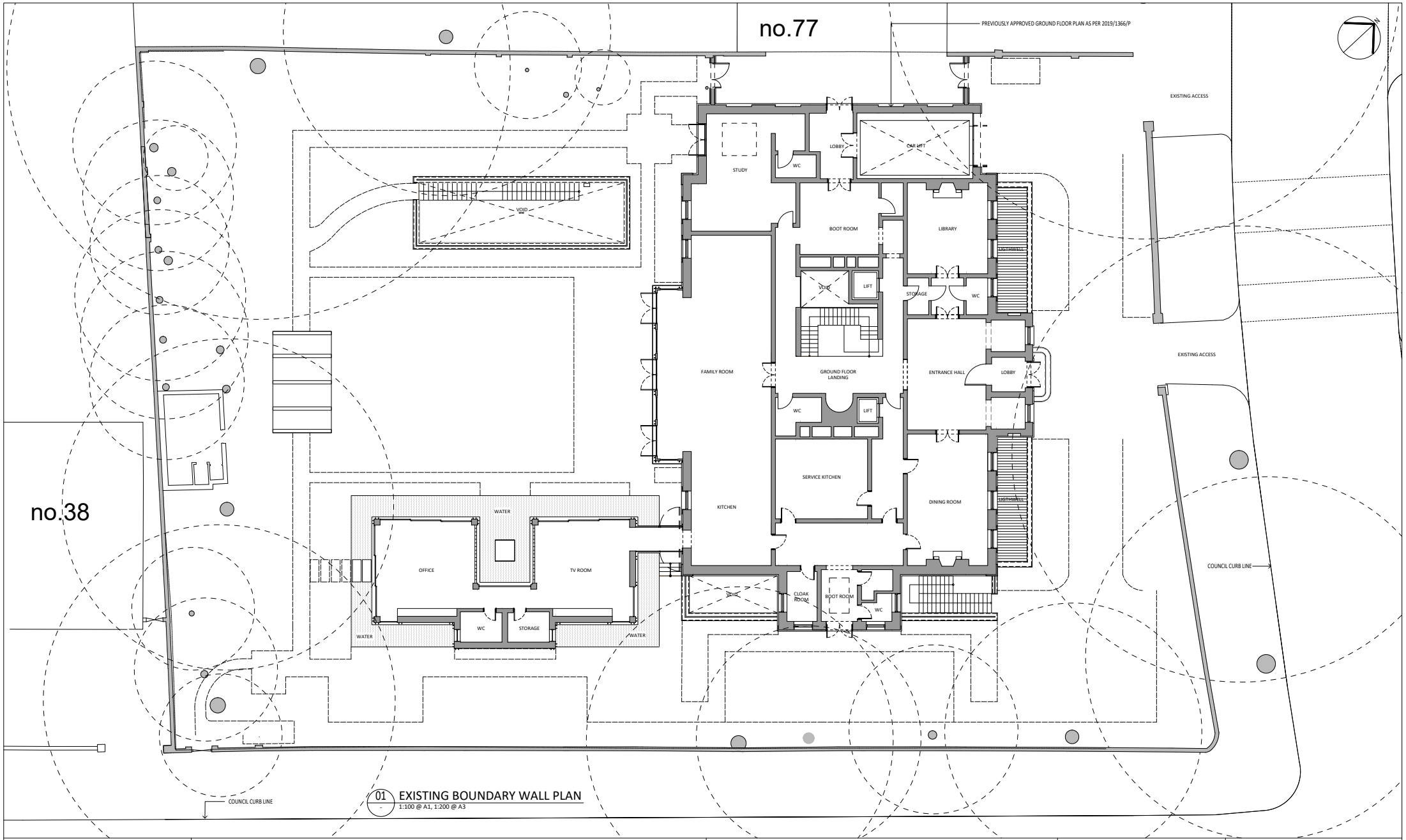
Date NOVEMBER 2020 **Dwg By** AN

Scale
1:200 @ A1 & 1:400 @ A3

Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS

Unit 37 Chelsea Wharf I 15 Lots Road I London I SW10 0QJ
T 020 7349 1290 I F 020 7349 1291 I www.studioindigo.co.uk
Registered Office I 37 Warren Street I London I W1T 6AD
Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revison
3680	A1-021	P1



01 EXISTING BOUNDARY WALL PLAN
1:100 @ A1, 1:200 @ A3

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ISSUED FOR PLANNING

Notes

SCALE IN METRES
0 1 2 4 6 8 10

Rev	Date	Issuer	Notes
P1	11.09.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73-75 AVENUE ROAD, LONDON, NW8 6JD

Drawing Title
EXISTING BOUNDARY WALL PLAN

Date
SEPTEMBER 2020

Dwg By
AN

Scale
1:100 @ A1 & 1:200 @ A3

Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS

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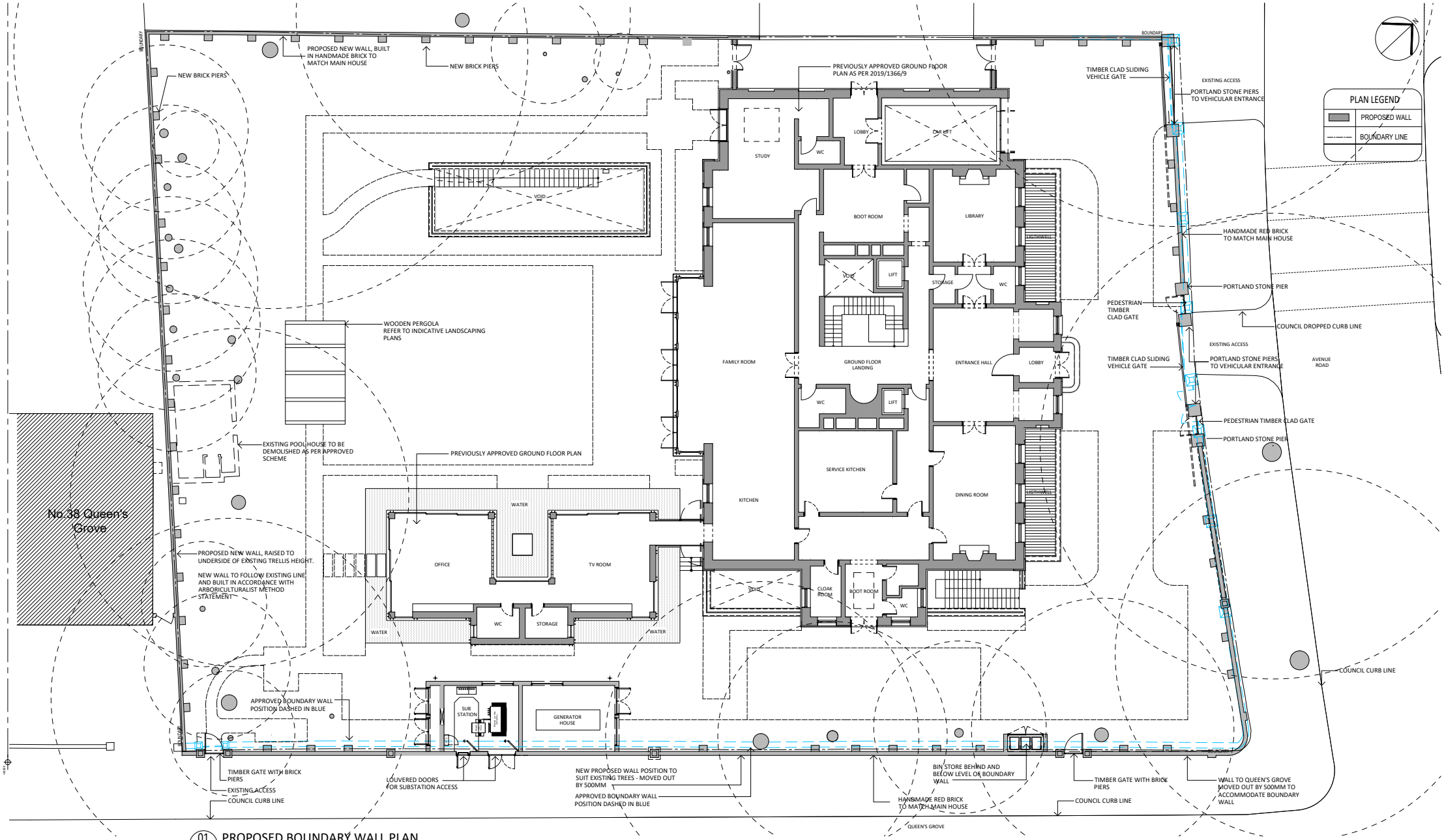
T 020 7349 1290 I F 020 7349 1291 I www.studioindigo.co.uk
Registered Office I 37 Warren Street I London I W1T 6AD
Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revision
3680	A2-005	P1



01 - PROPOSED BOUNDARY WALL PLAN
1:100 @ A1, 1:200 @ A3

PLANNING ISSUE

Notes

SCALE IN METRES
0 1 2 4 6 8 10

Rev	Date	Issuer	Notes
P2	11.09.2020	AN	UPDATED & RE - ISSUED TO PLANNING CONSULTANT
P1	19.08.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
PROPOSED BOUNDARY WALL PLAN

Date
AUGUST 2020

Dwg By
AN

Scale
1:100 @ A1 & 1:200 @ A3

Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS
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Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revison
3680	A2-110	P2

01 EXISTING STREET ELEVATION - QUEEN'GROVE
1:100 @ A1, 1:200 @ A3

02 EXISTING STREET ELEVATION - AVENUE ROAD
1:100 @ A1, 1:200 @ A3

73-75 AVENUE ROAD

77 AVENUE ROAD

Notes

SCALE IN METRES
0 1 2 4 6 8 10

Rev	Date	Issuer	Notes
P1	11.09.2020	AN	ISSUED TO PLANNING CONSULTANT

PLANNING ISSUE

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
EXISTING STREET ELEVATIONS

Date
AUGUST 2020

Dwg By
AN

Scale
1: 100 @ A1 & 1:200 @ A3

Studio Indigo Ltd
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T 020 7349 1290 I F 020 7349 1291 I www.studioindigo.co.uk
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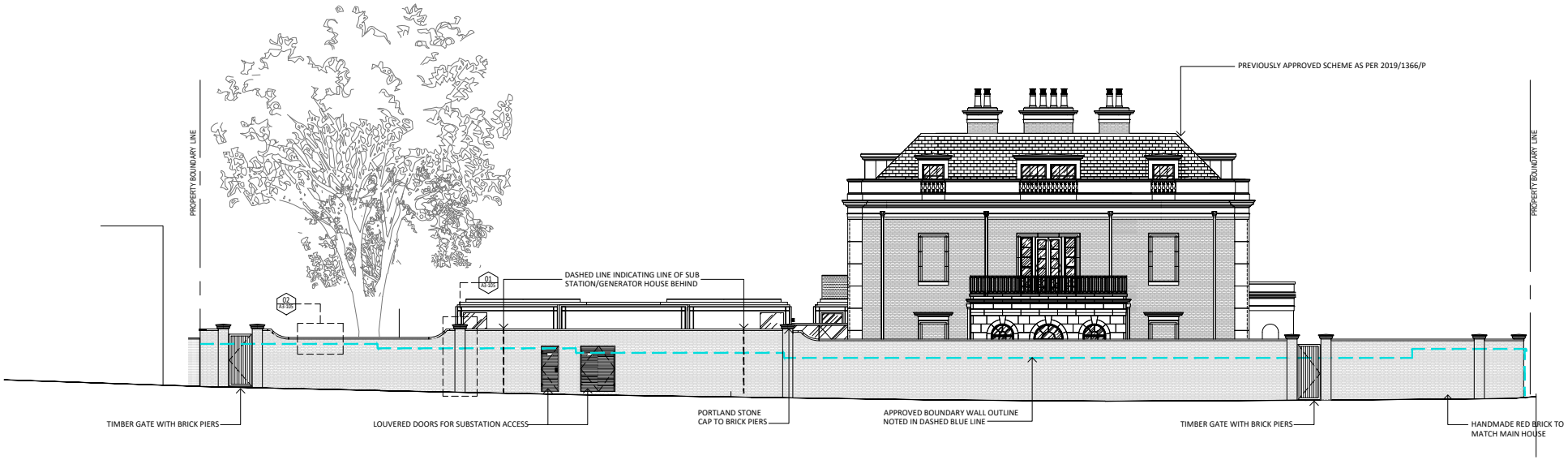
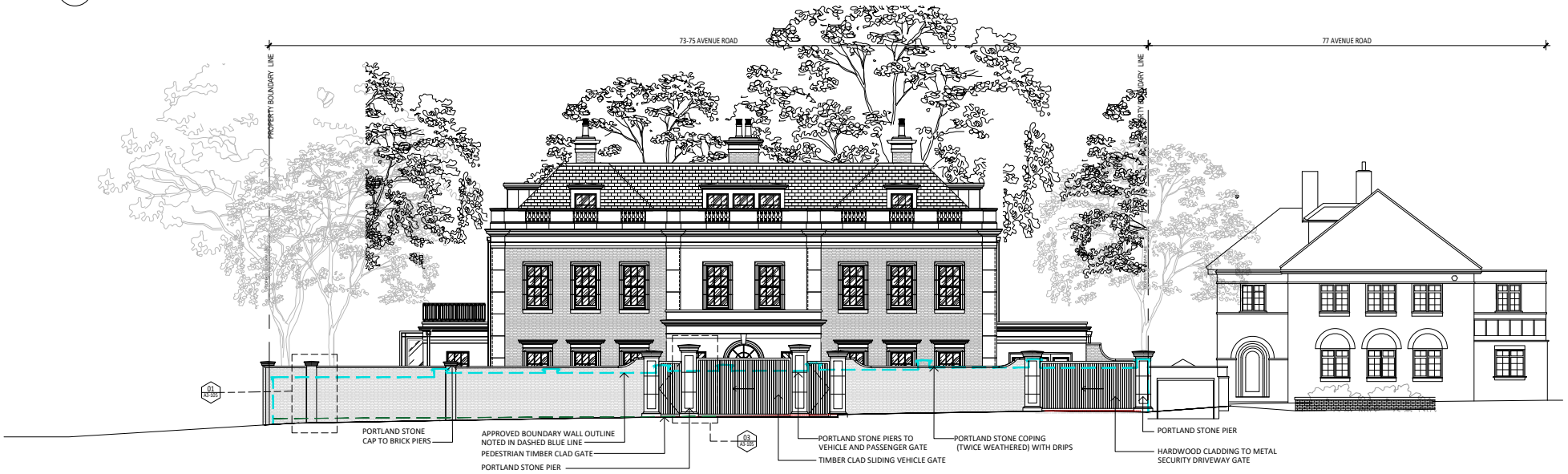
Project Number	Drawing Number	Revison
3680	A3-050	P1



01 PROPOSED STREET ELEVATION - QUEENS GROVE

1:100 @ A1, 1:200 @ A3



02 PROPOSED STREET ELEVATION - AVENUE ROAD

1:100 @ A1, 1:200 @ A3

PLANNING ISSUE

Notes

SCALE IN METRES
0 1 2 4 6 8 10

Rev	Date	Issuer	Notes
P2	11.09.2020	AN	UPDATED & RE - ISSUED TO PLANNING CONSULTANT
P1	19.08.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
PROPOSED STREET ELEVATIONS

Date
AUGUST 2020

Dwg By
AN

Scale
1: 100 @ A1 & 1:200 @ A3

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Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revison
3680	A3-200	P2

Delegated Report (Members Briefing)	Analysis sheet	Expiry Date:	15/10/2020
	N/A	Consultation Expiry Date:	22/10/2020

Officer	Application Number(s)
David Peres Da Costa	2020/3796/P
Application Address	**Drawing Numbers**
73-75 Avenue Road London NW8 6JD	Refer to Draft Decision Notice

PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature

Proposal(s)

Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

Recommendation(s):	**Grant conditional planning permission subject to s106 legal agreement**
Application Type:	**Householder application**

Conditions or Reasons for Refusal:	**Refer to Draft Decision Notice**					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	**00**	No. of responses	**00**	No. of objections	**00**
Summary of consultation responses:	A site notice was displayed from 09/09/20 to 03/10/20. No comments have been received.					
CAAC/Local groups* comments: *Please Specify	**Elsworthy Residents Committee – object** It seems perverse to consider allowing the pavement in Queens Grove to be reduced by moving the position of the brick wall 500 mm. This at a time when Camden, and indeed all over the country, pavements are being widened to allow greater numbers of pedestrians to pass freely on the footpath. In order to protect the valuable trees there could be breaks in the brick wall and railings around the trees. The introduction of access gates for the bin store etc that open out onto the pavement of Queens Grove will be a hazard as has proved already elsewhere locally. They are left open for the bin collection, the bins are then left on the pavement and the doors remain open until it is remembered to come out, put the bins away and close them. All this will be out of sight for the occupants of the property but will be dangerous and an eyesore for those passing by, especially if the width of the footpath has been reduced. Please remember that the black and white tiled road sign 'Queen's Grove' (No doubt not saved when the wall was demolished) should be replaced on the new wall. *Officer's comment: The application has been revised and the bin store amended so that the doors would not open onto the pavement but rather would open onto the front garden. An email was sent to the Elsworthy Resident's Committee advising of this revision and the following additional comment was received.* I'm glad my comment regarding the hazard of the bin store has been understood and an effort has been made to effect a solution. However I still object to the pavement being narrowed by moving the wall out and the bins will still sit on the narrowed pavement, unseen from the house, being unsightly and blocking passage for passers-by until taken back in through the gate. I suggest that the bin store be incorporated in the front driveway. *Officer's comment: The reason for the location of the bin store on the side is to minimise its visual impact when viewed from principal rooms. The side elevation houses secondary accommodation where the view is not so important. It is understood that the bins would be taken out through the vehicular gates and placed on Avenue Road. However, should the bins be*					

	put out onto Queens Grove it is noted that this road is no different from any other street in the borough in that on waste collection days all bins are put out on to the public highway, emptied and then taken back in again. There is no reason to suggest the application site will be any different from any other property and even more so with a house such as this where staff will be present to ensure these matters are dealt with in a timely manner. *The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway.* *The erection of road signs is not a planning matter.*

Site Description

The application site is located on the corner of Avenue Road and Queen's Grove. Planning permission was granted 28/03/2012 (planning ref: 2011/2388/P) for a two storey dwelling with lower ground floor and basement. Construction of this is nearing completion.

The site is not located in a conservation area but the St John's Wood Conservation Area lies to the south-west of 38 and 37a Queen's Grove and the corner of the Elsworthy Conservation Area lies to the east of the junction of Elsworthy Road with Avenue Road diagonally opposite the site.

Relevant History

2011/2388/P: Erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building). Granted Subject to a Section 106 Legal Agreement 28/03/2012

2019/1366/P: Variation of condition 1 (approved plans) of planning permission 2011/2388/P dated 28/03/2012 (for erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building)), namely changes to detailed design and materials on all elevations including stone balustrade at roof level, stone finish to central bay and replacement of sash window with garage door (all to front elevation) including relocation of car lift; replacement of 2 storey bay on Queen's Grove elevation with single storey structure with terrace above; alterations to footprint and location of basement including additional lightwell and relocation of garden lightwell; replacement of orangery with contemporary pavilion with flat roof; new French doors to side elevation (north elevation); and erection of pergola in rear garden. Granted Subject to a Section 106 Legal Agreement 06/04/2020

Relevant policies

NPPF 2019

The London Plan March 2016, consolidated with alterations since 2011
Intend to Publish London Plan 2019

Camden Local Plan 2017
Policy A1 Managing the impact of development
Policy A3 Biodiversity
Policy A4 Noise and vibration
Policy D1 Design
Policy D2 Heritage
Policy T1 Prioritising walking, cycling and public transport
Policy T3 Transport infrastructure

Camden Planning Guidance
Design (adopted March 2019)
Amenity (adopted March 2018)
Transport (adopted March 2019)
Trees (March 2019)

Assessment

1. Proposal

1.1. The application seeks amendments to the approved boundary treatment along Avenue Road and Queen's Grove and also the replacement of the boundary treatment at the rear with no. 38 Queen's Grove and the side boundary with 77 Avenue Road. The proposal also includes the erection of a brick building to house an emergency generator and sub-station to the rear garden and a bin store to front garden. In detail, the following is proposed:

- Erection of a new boundary wall on the Avenue Road frontage with stone piers and timber clad gates. This is an amendment to the boundary treatment previously approved under planning reference 2011/2388/P as amended by 2019/1366/P.

- Erection of a new boundary wall on the Queen's Grove frontage. This would be moved 0.5m further out to safeguard the existing mature (TPO) trees (and their roots) along Queen's Grove and would include timber louvred access doors for the substation housing and two pedestrian access gates at either end of the frontage.

- Replacement of the boundary treatment where the site abuts adjoining properties consisting of erection of a new brick boundary wall at the rear with no. 38 Queen's Grove and new side wall with no. 77 Avenue Road; and

- Provision of a brick housing for a generator and substation and brick bin store in the garden curtilage.

Assessment

1.2. The main issues for assessment are design, amenity, transport and trees.

1.3. Design

1.4. The approved boundary treatment to Avenue Road would be amended and the vehicle gate flanked by a large pedestrian gate would be replaced by a vehicle gate flanked by two narrower pedestrian gates. The material of the approved piers on either side of the vehicle and pedestrian gates would be amended from brick to Portland stone. This would match the detailing of the main house. The height of the wall would be increased in height (by a maximum of 0.5m) close to the corner with Queen's Grove. The changes to the appearance of the Avenue Road boundary are considered minor and would be sympathetic to the host property and the streetscape.

1.5. The height of the approved Queen's Grove boundary would be increase by approximately 0.89m and would range in height from approx. 2.8m to 3m (the approved wall ranged in height from approx. 1.9m to 2.24m. While this is a significant increase in height, the height of the existing wall and trellis (now demolished) was 2.67m and therefore the increase in height would be relatively small when compared to the pre-existing wall and trellis. Furthermore, the proposed building housing the substation and generator would sit just below the height of the wall. Therefore if the wall were lower, the substation would be visible. The height of the wall is therefore necessary to ensure sure there is no adverse visual impact from the proposed sub-station and to safeguard the visual appearance of the local area. In this context, the height of the boundary wall is considered acceptable.

1.6. The boundary walls would be constructed from red handmade brick to match the main house. This would ensure consistency between the two elements.

1.7. The submission states that the existing walls with the neighbouring properties (no.38 &

no.77) are structurally unsound with large cracks. The proposal seeks to demolish the existing walls with trellis and rebuild, raising the wall height to just below the existing trellis height. This would provide a more secure boundary between adjoining properties and provides aesthetic consistency between all four boundary lines. The replacement boundary walls are therefore considered acceptable.

1.8. The generator and substation enclosure will be below the proposed boundary wall height so will not be visible from the street level. The detail design of the generator and substation enclosure is considered acceptable. The substation would be accessed from the Queen's Grove footway with doors which open onto the pavement. This is a requirement of UKPN. The double doors would be for any large plant that may be needed at any given time in the future and the single door would be for maintenance access. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations. Therefore, in this instance the doors opening onto the footway are considered acceptable. The bin store would be a relatively small enclosure positioned next to the side boundary wall and would not be visible from the public realm.

1.9. Amenity

1.10. The height of the proposed walls between the application site and the neighbouring properties to the rear and the side (no.38 & no.77) would be the same height as the existing wall with trellis. Therefore there would be minimal impact on neighbouring amenity in terms of daylight and sunlight or overbearing. The increase in the height of the boundary wall to Queen's Grove would likewise have minimal impact on neighbouring amenity as this wall is adjacent to the pavement and road. Likewise there would be no impact on neighbouring amenity from the bin store or the building housing the generator and sub-station.

1.11. <u>Noise</u>

1.12. The application proposes a brick building to house an electricity substation and emergency generator adjacent to the boundary wall with Queen's Gove. A noise report has been submitted to support the application and has been reviewed by the Council's noise officer. The lowest background noise level was 36dB. The Council's noise policy states that emergency equipment such as generators which are only to be used for a short period of time will be required to meet the noise criteria of no more than 10dB above the background level (L90 15 minutes). During standby periods, emergency equipment will be required to meet the usual criteria for plant and machinery. The noise report confirms that mitigation will be required to comply with the Council's noise criteria. A condition will be included to ensure the mitigation recommendations of the noise report are implemented. Further noise conditions will ensure that the equipment does not breach the Council's noise thresholds and will restrict the operation and testing of the emergency generator to protect neighbouring amenity.

1.13. Transport

1.14. The proposal was revised to omit the bin store doors opening onto the footway. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations.

1.15. The application seeks to move the boundary wall adjacent to Queen's Grove 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots. This would involve the narrowing of the existing footway. The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway. Therefore the loss of 0.5m of footway is considered acceptable in this

instance.

1.16. Highways have confirmed a stopping up order will be required. The current cost for processing the order is: £27,307.00. This would be secured by legal agreement.

1.17. The footway directly adjacent to the site is likely to sustain damage because of building the boundary wall. It is noted that a highways contribution (£56,000) was secured as part of the previous application (2011/2388/P**)** and no work has been implemented. Therefore these funds would still be available to be spent on the highway reinstatement and no further highways contribution would be required.

1.18. Trees

1.19. No trees are proposed to be removed in order to facilitate development. The arboricultural method statement is considered sufficient to demonstrate that the trees to be retained will be adequately protected in accordance with BS5837:2012. A condition will be included to require the works would be undertaken under the supervision and monitoring of the retained project arboriculturalist in consultation with the Council's Tree and Landscape Officer.

1.20. Conclusion

1.21. Grant conditional planning permission subject to s106 legal agreement

1.22. Heads of terms:

- Highways contribution
- Stopping up order

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 23rd November 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

For Office Use
File Ref: SU/TCPA/S247/
Date Received:
Date Acknowledged:

Camden

Stopping up and Diversion of Highways

Section 247 of the *Town and Country Planning Act 1990*

Important

This application form relates to stopping up and diverting highways under the *Town and Country Planning Act 1990*. Make sure you are filling in the correct form. Please read the *Stopping Up, Diversion of Highways - Guidance for Filling in the Application Form (TCPA, S247)* before answering any questions. References to notes in this guidance are given in brackets below. Further general notes about stopping up and diversion of highways is also available: *Stopping Up, Diversion of Highways - General Notes (TCPA, S247)*

Please ensure all the necessary enclosures accompany this application form.

A Names and contact details (1)

Developer

Name of Organisation	
Contact Name	
Address	
Contact telephone number	
Contact Fax Number	
Contact e-mail	
Any other contact information	

Applicant, if not the developer

Name of Organisation	Deroda Investments Limited
Contact Name	
Address	73-75 Avenue Road London NW8 6JD
Contact telephone number	
Contact Fax Number	
Contact e-mail	
Any other contact information	

Agent/Solicitor *(where one has been appointed)*

Name of Organisation	TJR Planning Ltd
Contact Name	Tracey Rust
Address	
Contact telephone number	07775 656 182
Contact Fax Number	
Contact e-mail	tracey@tjrplanning.co.uk
Any other contact information	

B Purpose of stopping up/diversion and details about the planning application

What is the purpose of the stopping up/diversion? Describe briefly why the planning application necessitates closure/diversion of the highway. Please make a statement below justifying the stopping up or diversion. Please also comment on any possible implications for road safety. (2)

Erection of a new boundary wall 500mm further out from the existing boundary line to safeguard existing mature (TPO) trees and their roots on the Queens Grove frontage.

Planning application reference (3)	2020/3796/P
Date planning permission was granted	3rd March 2021
If planning permission has not yet been granted can you explain why you are making this application concurrently?	N/A

s

C Highway to be stopped up

Please give the names, addresses and postcode where the highway(s) to be stopped up are situated (4)

Northern section of Queen's Grove, NW8 6JD

Type of highway (5)

[A] Publicly maintained all purpose highway	☐
[B] Highway not publicly maintained	☐
[C] Footpath	x
1. Publicly maintained	x
2. Not publicly maintained	
3. Don't know	
[D] Footpath	☐
1. Publicly maintained	
2. Not publicly maintained	
3. Don't know	
[E] Bridleway	☐
[F] Cycle track	☐
[G] Other, please specify_____	☐

Give details about the highway to be stopped on Table C1

Table C1: Highways to be stopped up - details about each section (6)							
Ref. no.	Length (metres)	Width (metres)	Terminal points		Type of highway	Details of who owns the land on either side of each section and any other person that will be directly affected	Comments
			From	To			
(1)	57m	0.5m	The Queens Grove boundary of 73 Avenue Road, as per attached plan		Pavement	Applicant owns 73 Avenue Road, other side is Local Authority pavement	
(2)							
(3)							
(4)							
(5)							
(6)							

D New highway to be provided (if any)

Please describe the new highway to be provided and give the name proposed (7)

N/A

Type of highway (8)

[A] Publicly maintained all purpose highway ☐

[B] Highway not publicly maintained ☐

[C] Footway ☐

1. Publicly maintained
2. Not publicly maintained
3. Don't know

[D] Footpath ☐

1. Publicly maintained
2. Not publicly maintained
3. Don't know

[E] Bridleway ☐

[F] Cycle track ☐

[G] Other, please specify_____ ☐

Do you want the diverted highway to be adopted by the Highway Authority and maintained as a public highway? (9)

Yes ☐ No ☐

Give details about the diverted highway on Table D1

Table D1: New highways to be provided - details about each section (10)							
Ref. no.	Length (metres)	Width (metres)	Terminal points		Type of highway	Details of who owns the land on this section to form the new highway and any other person directly affected	Comments
			From	To			
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							

E Highway to be improved (if any)

Please describe the highway improvements briefly (11)

N/A

Type of highway

[A] Publicly maintained all purpose highway ☐

[B] Highway not publicly maintained ☐

[C] Footway ☐

1. Publicly maintained
2. Not publicly maintained
3. Don't know

[D] Footpath ☐

1. Publicly maintained
2. Not publicly maintained
3. Don't know

[E] Bridleway ☐

[F] Cycle track ☐

[G] Other, please specify_____ ☐

Do you want the improved highway to be adopted by the Highway Authority and maintained as a public highway? (12)

Yes ☐ No ☐

Give details about highway improvements on table E1

Is the improved highway within an existing adopted highway boundary?

Yes ☐ No ☐

Table E1: Highway to be improved (if any)							
Ref. no.	Length (metres)	Width (metres)	Terminal points		Type of highway	Details of who owns the land on this section to form the new highway and any other person directly affected	Comments
			From	To			
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							

F – Consents (13)

Warning – if there is no evidence to the contrary, then it is presumed that the owners of the adjoining land own the sub-soil of the highway, up to the centre line. The making of an order may be delayed or frustrated if you fail to obtain consent from the owner of the sub-soil. Even if an order is made, a development may be frustrated if consent has been withheld.

Have you obtained written consent from everyone who has an interest in the land to be developed (insofar as consent is needed before the development can be carried out) or who may be directly affected by the proposed stopping up/diversion?

Yes [X]

No [ ]

Consents must be obtained from landowners and statutory undertakers having apparatus under, in, upon, over, along or across the highway.

If "Yes", please attach these consents.

If "No", please attach names and addresses of persons/organisations whose consents you have not obtained. If known, what is their interest in the highway proposed to be stopped up/diverted?

(continue on a separate sheet if necessary)

G Undertaking and declaration

- I declare that:
  I understand that authority to stop up or divert a highway is conferred solely by the publication of the final notice announcing that an order has been made:

  Except to the extent authorised by or under some other statutory provision, the highway(s) to be stopped up or diverted is/are in no way obstructed and is/are fully available for use.

- I undertake that
  Except to the extent authorised as above, such highways(s) shall no way be obstructed or works to start before the order comes into operation.

  The London Borough of Camden will be paid for the work undertaken to process this application based on set fees set out on the Council's website.

- The *initial application fee* of £8,500 is enclosed to process this application. If the Council accepts the application it is understood that I will pay the *legal process fee* to process the application (14).

- I enclose a location plan showing details of each section of the highway proposed to be stopped up or diverted.

- All the Information given in this form is, to best of my knowledge and belief, true and accurate.

- I apply for an order to authorise the stopping up or diversion of the highway(s) described above.

Signature	
Name	WEIQIN LOH
Date	17 November 2021

Please submit the application form with

1. The initial application fee of £9247 (until end March 2021)
2. Plans as required
3. Letters of consent from third parties

to:

Elliott Della
Engineering Service, 4th floor
5 Pancras Square
London, N1C 4AG

Can you also email the application form and items (2) and (3) above to:

elliott.della@camden.gov.uk and to Steve.Cardno@camden.gov.uk

Date: 25 July 22
Our reference: ES/I&M/ED/1/22/S247

Engineering Service
Supporting Communities
London Borough of Camden
Room 4N/5PS
Town Hall
Judd Street
London
WC1H 9JE
Phone: 020 7974 4444

camden.gov.uk

Dear Sir / Madam,

QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD

IMPORTANT- THIS COMMUNICATION AFFECTS YOUR PROPERTY

Attached you will find a copy of the official notice, plans and draft orders detailing the closure of the above site.

The closure is required to allow the re-development of the 75 Avenue Road to take place.

The proposal is as follows:
Areas of Highway to be Stopped Up

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

We enclose a copy of the notice and draft order in respect of the order to be made by the Council for your attention. Please read the notices and draft orders carefully. If the order is made the land will cease to be a public right of way. Please note that the closed section of footpath will result in a slightly narrower foortway.

Could you kindly reply to Elliott Della by e-mail to engineeringservice@camden.gov.uk or to Engineering Service, Room 4N/5PS, Town Hall, Judd Street, London WC1H 8EQ by 24 August 2022 and confirm as to whether or not you have any objections to the proposed order.

PLEASE NOTE RESPONSES ARE REQUESTED TO BE BY E-MAIL

If you require any further information, please do not hesitate to contact, Elliott Della, on 020 7 974 5138.

Yours faithfully

Elliott Della
Senior Engineer
Environment and Transport

Reference: ES/I&M/ED/1/22/S247

Section 247 of the Town and Country Planning Act 1990

QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD

The London Borough of Camden being satisfied that it is necessary to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 hereby gives notice that it proposes to make an Order under Section 247 of the Town and Country Planning Act 1990 (as amended) to authorise the stopping up of the highway described in the First Schedule, namely the part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

If the Order is made, the stopping-up will solely be authorised in order to enable the development described in the Second Schedule to this notice to be carried out in accordance with the planning permission granted by the London Borough of Camden on the 3rd March 2021 under reference 2020/3796/P and for no other purpose.

Copies of the draft Order and relevant plan may be inspected during normal opening hours for a period of 28 days commencing on **28 July 2022** at St Pancras Library, 1st Floor, 5 Pancras Square, Kings Cross, London N1C 4AG or www.camden.gov.uk/stopping-up

Any Person may object to the making of the proposed Order by writing to the Director of Environment & Sustainability, London Borough of Camden, Room 4N/5PS Town Hall, Judd Street, London, WC1H 8EQ or engineeringservice@camden.gov.uk quoting reference ES/I&M/ED/1/22/S247. The departmental contact for any queries relating to this publication is Elliott Della telephone number 020 7974 5138.

PLEASE NOTE RESPONSES ARE REQUESTED TO BE BY E-MAIL

IN PREPARING AN OBJECTION IT SHOULD BE BORNE IN MIND THAT THE SUBSTANCE OF IT MAY BE IMPARTED TO OTHER PERSONS WHO MAY BE AFFECTED BY IT AND THAT THOSE PERSONS MAY WISH TO COMMUNICATE WITH THE OBJECTOR ABOUT IT.

THE FIRST SCHEDULE

Areas of Highway to be Stopped Up

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

THE SECOND SCHEDULE

The Location
73-75 Avenue Road NW8 6JD

The Development
Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

Richard Bradbury
Director of Environment & Sustainability

LONDON BOROUGH OF CAMDEN
TOWN AND COUNTRY PLANNING ACT 1990
SECTION 247
GREATER LONDON AUTHORITY ACT 1999

THE STOPPING UP OF HIGHWAYS (LONDON BOROUGH OF CAMDEN) (NUMBER 1) ORDER 2022 MADE:

QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD

The London Borough of Camden makes this order in the exercise of its powers under Section 247 of the Town and Country Planning Act 1990 as amended by Section 270 and Schedule 22 of the Greater London Authority Act 1999 and of all other enabling powers: -

The London Borough of Camden authorises the stopping up of the areas of highway described in the First Schedule to this Order and shown on the attached drawing solely in order to enable the development described in the Second Schedule to this Order, to be carried out in accordance with the planning permission, granted under Part III of the Town & Country Planning Act 1990, by the London Borough of Camden on the 3rd March 2021 under reference 2020/3796/P, for the works described in the Second Schedule to this Order.

1. This Order shall come into force on _____ and may be cited as the Stopping Up of Highways (London Borough of Camden) (Number 1) Order 2022.

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

……

Authorised Signatory

THE FIRST SCHEDULE

Areas of highway to be Stopped Up

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

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73-75 Avenue Road NW8 6JD.

The Development
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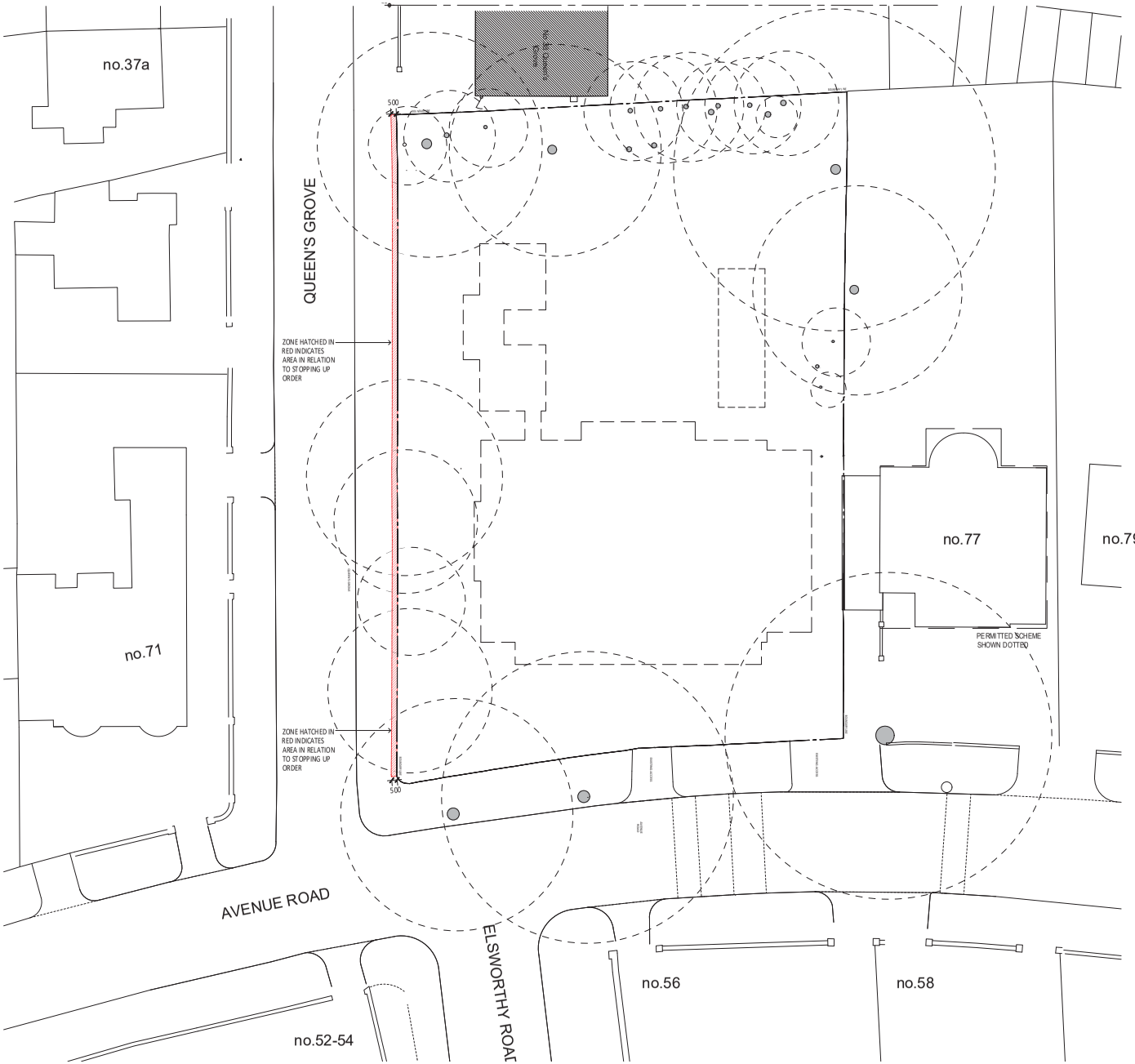

3 PLANNING ISSUE

Notes

GRAPHIC SCALE
0 5 10 15 20

Rev	Date	Issuer	Notes
P1	18.11.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
PROPOSED SITE PLAN

Date
NOVEMBER 2020

Dwg By
AN

Scale
1:200 @ A1 & 1:400 @ A3

Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS

Unit 37 Chelsea Wharf I 15 Lots Road I London I SW10 0QJ
T 020 7349 1290 I F 020 7349 1291 I www.studioindigo.co.uk
Registered Office I 37 Warren Street I London I W1T 6AD
Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revison
3680	A1-021	P1

Date: 13 March '23
Our reference: ES/I&M/ED/1/22/S247

Planning Support <planningsupport@london.gov.uk>

Engineering Service
Supporting Communities
London Borough of Camden
Room 4N/5PS
Town Hall
Judd Street
London
WC1H 9JE
Phone: 020 7974 4444

camden.gov.uk

Dear Sir / Madam,

STOPPING UP ORDER OBJECTIONS - QUEEN'S GROVE:
PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD NW8 6HP

The council under took a stopping up consultation for a development at 75 Avenue Road corner of Queen's Grove.

We have received two objections which has not been removed.

We request that the mayor to investigate this application and to decide if a public enquiry is required in this case or if the order can be made with out the need for a public enquiry.

Attached you will find a pack containing:

1. A copy of the stopping up order consultation pack
2. A copy of the objection from Town Legal LLP and response from Camden Legal Service.
3. A copy of the objection from N. Ritblat
4. A copy of the Officer Report from planning application 2020/3796/P
5. A copy of the S106 agreement from planning application 2020/2796/P
6. Copy of photos of the wall/ site of the stopping up order.
7. Copy of the Objection from Thames Water and subsequent removal of the objection.

The main points of the objections include:

- The wall has been completed and thus not eligible to make an order under S247 of the Town and Country Planning Act 1990.

Councils Response: Please see Appendix 6 (Photos) showing that the wall is not yet complete, the order can be made as long as not all of the works are complete.

In Ashby v Secretary of State for the Environment [1980] 1WLR 673 it was held that a stopping up order could be confirmed if the decision making body is satisfied that it is necessary to enable completion of the development to be carried out in accordance with the planning permission (*per Stephenson and Goff L.JJ.*) or in order to enable the development that has been carried out on the ground to be authorised (*per Everleigh L.J.*)

- Objection that the narrowing of the footway.

Council's Response: Appendix 4 (The Planning Officer's Report) clearly shows in Paragraphs 1.1,1.16 and 1.19 that the proposal to narrow the footway was due to the existing trees.

- Thames Water has requested that the order is amended to ensure that they will have access to the plant the applicant has agreed to this. an amended version of the order can be found in appendix 7, thus removing the objection.

Council Response: An amended version of the order can be found in appendix 7, thus removing the objection.

The Council would like to confirm that paragraphs 1.1, 1.15, 1.16 and 1.22 show that the need for a stopping up order was discussed during the planning process. This therefore gives good reason not to require a public enquiry in this case.

If you have any questions please contact me on the number below If you require any further information, please do not hesitate to contact, Elliott Della, on 020 7 974 5138.

Yours faithfully

Elliott Della
Senior Engineer
Environment and Transport

Appendix 1

A copy of the consultation pack

Date: 25 July 22
Our reference: ES/I&M/ED/1/22/S247

Engineering Service
Supporting Communities
London Borough of Camden
Room 4N/5PS
Town Hall
Judd Street
London
WC1H 9JE
Phone: 020 7974 4444

camden.gov.uk

Dear Sir / Madam,

QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD

IMPORTANT- THIS COMMUNICATION AFFECTS YOUR PROPERTY

Attached you will find a copy of the official notice, plans and draft orders detailing the closure of the above site.

The closure is required to allow the re-development of the 75 Avenue Road to take place.

The proposal is as follows:
Areas of Highway to be Stopped Up

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

We enclose a copy of the notice and draft order in respect of the order to be made by the Council for your attention. Please read the notices and draft orders carefully. If the order is made the land will cease to be a public right of way. Please note that the closed section of footpath will result in a slightly narrower foortway.

Could you kindly reply to Elliott Della by e-mail to engineeringservice@camden.gov.uk or to Engineering Service, Room 4N/5PS, Town Hall, Judd Street, London WC1H 8EQ by 24 August 2022 and confirm as to whether or not you have any objections to the proposed order.

PLEASE NOTE RESPONSES ARE REQUESTED TO BE BY E-MAIL

If you require any further information, please do not hesitate to contact, Elliott Della, on 020 7 974 5138.

Yours faithfully

Elliott Della
Senior Engineer
Environment and Transport

Reference: ES/I&M/ED/1/22/S247

Section 247 of the Town and Country Planning Act 1990

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Richard Bradbury
Director of Environment & Sustainability

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THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

……

Authorised Signatory

THE FIRST SCHEDULE

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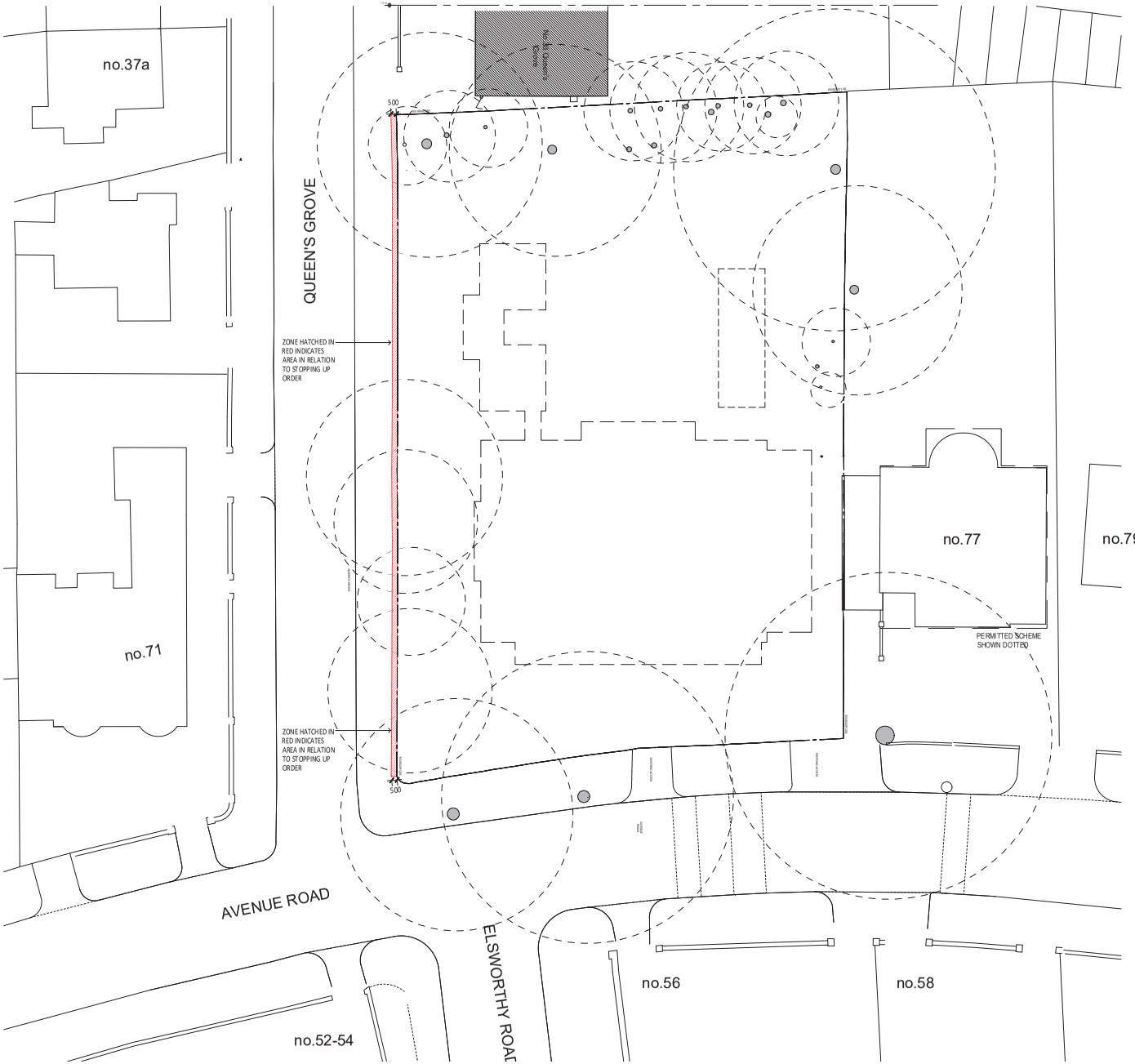


Notes

GRAPHIC SCALE
0 5 10 15 20

Rev	Date	Issuer	Notes
P1	18.11.2020	AN	ISSUED TO PLANNING CONSULTANT

Client
PRIVATE CLIENT

Address
73 - 75 AVENUE ROAD, NW8 6JD

Drawing Title
PROPOSED SITE PLAN

Date
NOVEMBER 2020

Dwg By
AN

Scale
1:200 @ A1 & 1:400 @ A3

Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS

Unit 37 Chelsea Wharf I 15 Lots Road I London I SW10 0QJ
T 020 7349 1290 I F 020 7349 1291 I www.studioindigo.co.uk
Registered Office I 37 Warren Street I London I W1T 6AD
Registered in England and Wales I Ltd no: 06005991

Project Number	Drawing Number	Revison
3680	A1-021	P1

41 **PLANNING ISSUE**

Appendix 2

A copy of the objection from Town Legal LLP and response from Camden Legal Service.

From:	Sean Mclean
To:	Elliott Della
Subject:	FW: 73-75 Avenue Road
Date:	25 August 2022 12:37:52
Attachments:	Letter to Elliott Della at Camden.pdf [1980] 1 W.L.R. 673.pdf image001.png image002.png image003.png

Hi Elliott

Hope your well,

FYI

Kind regards.

Sean Mclean
Business Support Apprentice

Telephone: 020 7974 2181

From:
Sent: 25 August 2022 11:45
To: Engineering Service - Public Email Address <engineeringservice@camden.gov.uk>
Subject: FW: 73-75 Avenue Road

Dear Sirs

I refer to the letter from Town Legal on behalf on Mr. XXXXXXXXXX objecting to the narrowing of the pavement on Queen's Gove and confirm my objection s to this as well.

XXXXXX

XXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

From:
ent: Tuesday, 23 August 2022 8:48 pm
To:
Subject: 73-75 Avenue Road

Dear Neighbour

You might like to see the objection I've made to Camden in regard to 73-75 Avenue Road.

If you are so minded, you might like to email Camden confirming your objection on the basis of the letter from Town Legal.

Regards

XXXXXX

XXXXXXXXXX

XXXXXXXX
XXXXXXXXXXXXXX
PA: JXXXXXXXXXXXXXX

TOWN LEGAL LLP

Elliott Della
Director of Environment and Sustainability
London Borough of Camden
Room 4N/5PS
Judd Street
London
WC1H 8EQ

10 Throgmorton Avenue
London
EC2N 2DL

townlegal.com

T: 020 3893 0370
D: 020 3893 0385
E: patrick.robinson
@townlegal.com

By email: engineeringservice@camden.gov.uk

Your ref: ES/I&M/ED/1/225247
Our ref: EPGR
8 August 2022

Dear Mr Della

Stopping up proposal in Queen's Grove: 73-75 Avenue Road NW8 6JD

We act for the owners of XXXXXXXXXXXXX, who have received a communication from you, informing them of your proposal to make an Order under section 247 of the Town and Country Planning Act 1990, in order to close part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

On behalf of our clients, please record this as a formal objection, both on the encroachment, and to the improper use of a statutory power which is unavailable in the circumstances of this case. The encroachment that has occurred constitutes an illegal trespass on and obstruction of the highway, which is a criminal offence. How the highway authority has stood by and allowed this to happen warrants further investigation.

Before turning to the substance of the matter, may we point out that the letter you have sent is highly confusing, and will puzzle recipients, if the same form has been used with all parties notified. Whereas the draft Order correctly identifies what we assume to be the site of the proposed closure, the covering letter refers to a site in Cypress Place from Maple Street to Howland Street as shown on drawing CA4312/SK003/B – whatever that may be. We assume, but please confirm, that the reference to Cypress Street is a straightforward error. It risks making a nonsense of the public consultation.

As to the proposed narrowing of the footway purely to benefit the private interests of the householder of the double plot, our client takes strong exception to the form of the design, which entirely unnecessarily encroaches over the boundary. The elements of the development that have been located on the public highway could have been effortlessly positioned within the plot. It creates a wholly unwarranted and undesirable precedent that your authority will have difficulty resisting in other comparable situations.

Furthermore, there is an unsurmountable legal obstacle to your proposed use of the section 247 procedure, in a situation where, as is the case here, the works have been carried out and completed. We refer you to the attached Court of Appeal decision in **Ashby v Secretary of State for the Environment [1980] 1WLR 673.**

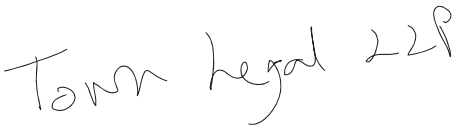
There the Court of Appeal decided – and this is still the law – that where works have been finished, the power (in 1979, the provision was section 209 of the 1971 Act) is no longer available. The point is expressly addressed by a majority of the Court of Appeal. Your attention is also drawn to para P247.05 of the Planning Encyclopaedia, Vol 2.

On the basis that the works project out onto the public highway, would you care to explain under what power the trespass could be considered lawful in its current condition ?

We look forward to your response.

Kindly acknowledge receipt.

Yours faithfully



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time and place for hearing the application. In *In re Marendez* the registrar refused to fix the time and place for hearing. The debtor appealed against that. The appeal was not heard until after the receiving order. At the time the receiving order was made therefore, the application to set aside the bankruptcy notice had never been heard at all. The refusal to fix a hearing was effected merely by the registrar indorsing the affidavit "No cause shown," or some similar words, and without a hearing. Rule 179 prohibits the making of a receiving order until the application to set aside the bankruptcy notice has been heard. As I have said, when the receiving order was made in *In re Marendez*, the application had not been heard, the registrar having refused to fix a date and time for hearing. Thus the issue in *In re Marendez* was whether the application could be said to have been heard prior to the determination of the appeal by the Divisional Court. That being said, and although we have only a very brief note of the judgment in *In re Marendez*, I think it is very probable that my observations were on any view too widely expressed, having regard in particular to *In re A Debtor (No. 10 of 1953), Ex parte the Debtor* v. *Ampthill Rural District Council* [1953] 1 W.L.R. 1050 which was not cited to the court in *In re Marendez*. I agree with Browne-Wilkinson J. that the latter case, *In re A Debtor (No. 10 of 1953)*, is directly in point in the present case and covers the present point.

In the circumstances, I agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors: *Adlers and Aberstones.*

[Reported by MISS HILARY PEARSON, Barrister-at-Law]

[COURT OF APPEAL]

* ASHBY AND ANOTHER *v.* SECRETARY OF STATE FOR THE ENVIRONMENT AND ANOTHER

1979 Oct. 31; Nov. 1; Dec. 11 — Stephenson, Goff and Eveleigh L.JJ.

Highway — Public path — Diversion order — Housing development obstructing footpath begun before diversion order published— Whether Secretary of State empowered to confirm order—Town and Country Planning Act 1971 (*c.* 78), *ss.* 209 (1), 210 (1)

In 1962 outline planning permission was granted to a developer for a housing development of 40 houses on a plot through which a public footpath ran. When detailed approval was sought, consideration was given to diverting the footpath. Permission was given to the developer and work commenced in 1976. A diversion order was made in respect of the footpath under sections 209 (1) and 210 (1) of the Town and Country Planning Act 1971. That was confirmed by the Secretary of State after a public inquiry in 1977. The applicants applied to

the Queen's Bench Division for an order quashing the Secretary of State's decision on the ground that some of the houses were nearly complete and it was not within his powers under section 209 (1) to validate development that had begun. After finding that some permitted development remained to be completed, the deputy judge refused to quash the decision, holding that the diversion order was necessary to enable the remaining work to be completed and that the Secretary of State could confirm the diversion of a footpath under section 209 (1) if he were satisfied that it was necessary to enable the development to be carried out in accordance with planning permission.

On appeal by the applicants:—

Held, dismissing the appeal, that the confirmation of the diversion order was valid as (*per* Eveleigh L.J.) on the true construction of section 209 (1) of the Town and Country Planning Act 1971 the Secretary of State might confirm the order stopping up or diverting the footpath if he were satisfied that it was necessary in order to enable development which had been carried out on the ground to be legalised (post, pp. 678 D–F, 679H) or (*per* Stephenson and Goff L.JJ.) the development on the footpath not having been completed, what remained to be done showed that it was necessary for the purposes of section 209 (1) to make an order to enable the development to be carried out (post, pp. 681E–G, 683A–B).

Decision of Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division affirmed.

The following case is referred to in the judgment of Goff L.J.:

Wood v. *Secretary of State for the Environment* (unreported), June 27, 1975.

The following additional cases were cited in argument:

Jones v. *Bates* [1938] 2 All E.R. 237, C.A.

Lucas (F.) & Sons Ltd. v. *Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491.

Reg. v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891; [1975] 3 W.L.R. 172; [1975] 3 All E.R. 243, C.A.

Thomas David (Porthcawl) Ltd. v. *Penybont Rural District Council* [1972] 1 W.L.R. 1526; [1972] 3 All E.R. 1092, C.A.

APPEAL from Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division.

The applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, by a notice of motion dated March 9, 1978, sought an order to quash and set aside the order of the Secretary of State for the Environment dated November 2, 1977, whereby he confirmed the order of the planning authority, the Kirklees Metropolitan District Council, made under section 210 of the Town and Country Planning Act 1971, known as the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. The grounds of the application were: (1) that the Secretary of State's decision was not within his powers under the Act of 1971; (2) that, the footpath being obstructed so as to be impassable, the Secretary of State and the planning authority could not be satisfied that it was necessary to divert the footpath in order to enable development to be carried out in accordance with planning permission under Part III of the Act; (3) that the Secretary of State and the planning authority were wrong in holding that they could be so satisfied if any development remained to be completed; (4) that they should have held that, once development had taken place to an extent that it

A obstructed the footpath, then they could not be so satisfied; (5) that, alternatively, the Secretary of State wrongly held that the permitted development had not been completed by reason of the internal works to some of the houses and the layout of land in curtilages; and (6) that there was no evidence on which the Secretary of State could reasonably conclude that the layout of the land in curtilages formed any part of the permitted development which remained to be completed.

B The deputy judge dismissed the application on July 13, 1978, holding, inter alia, that the Secretary of State could authorise the diversion of a footpath under section 209 (1) of the Act if he was satisfied that it was necessary to enable development to be carried out lawfully in accordance with planning permission and that the order had been properly confirmed by the Secretary of State. The applicants appealed against the deputy C judge's decision on the grounds that (1) on a proper construction of section 209 (1) of the Act of 1971, the power to authorise the diversion of a public footpath was to facilitate the proposed development and that the powers created under sections 209 and 210 of the Act could not be exercised so as to validate development already carried out; (2) the deputy judge was wrong in holding that he was entitled to consider another part of the development, not directly affected by the footpath, in deciding D whether the development had been carried out; and (3) the proper procedure should have been an application under section 111 of the Highways Act 1959, in which case objectors would have been entitled to invite the Secretary of State to consider other criteria; whereas the procedure adopted effectively encouraged developers to carry out unlawful development, thereby prejudicing the objectors' rights and the consider-E ation of the merits of their objections.

The facts are stated in the judgment of Eveleigh L.J.

Barry Payton for the applicants.
Jeremy Sullivan for the Secretary of State.
The planning authority was not represented.

F

Cur. adv. vult.

December 11. The following judgments were read.

STEPHENSON L.J. I will read first the judgment of Eveleigh L.J. who G is not able to be here this morning.

EVELEIGH L.J. This is an appeal against the refusal of the deputy judge to quash a decision by the Secretary of State concerning a footpath diversion order made by the Kirklees Metropolitan District Council, the planning authority under section 210 of the Town and Country Planning Act 1971.

H In 1962 outline planning permission was granted for housing development on an area of land through which ran a public footpath. Approval of the details of residential development for 40 houses was given on September 5, 1975, to a Mr. Woodhead, a builder. The proposed development involved obstruction of the footpath at a number of points and so the question of diversion arose. On September 4, 1975, the advisory panel on footpaths of the planning accepted a proposed route for the diversion. In January 1976 the builder laid out an alternative

footpath and started work on a house, No. 25, which obstructed the footpath before the planning authority had published a diversion order and of course before any application was made to the Secretary of State. For that he was fined £80 and ordered to pay £100 costs.

On March 15, 1976, the planning authority made a diversion order in respect of a new route. After objections had been received and a public meeting had rejected this diversion, the planning authority devised another route for the footpath which became the subject of the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. After a local inquiry, the Secretary of State confirmed the order. It is this decision which is the subject of the present appeal.

Section 210 (1) of the Town and Country Planning Act 1971 reads:

> "Subject to section 217 of this Act, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 209 (1) of this Act."

Section 217 (1) reads:

> "An order made under section 210 . . . of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it."

As the order made under section 210 was opposed, confirmation by the Secretary of State was required. Section 217 (2) reads:

> "The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 210 . . . to be satisfied."

Thus, the planning authority and the Secretary of State have to be satisfied of the matters referred to in section 209. Section 209 (1) reads:

> "The Secretary of State may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, or to be carried out by a government department."

It is on the interpretation of this subsection that this appeal depends. For the applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, emphasis is placed upon the words "to be carried out." It is said that these words relate to the future and cannot apply where development has begun or, alternatively and a fortiori, where development has been completed. It is argued that there is no power to ratify past activities which would only encourage developers to "jump the gun." The whole of Part X of the Act in which the relevant sections are contained and provisions in Schedule 20 and section 215 of the Act for objectors to be heard and inquiries to be held indicate that the purpose of those provisions is to prevent premature unlawful development where a highway will be obstructed. In the present case, therefore, the order and the Secretary of State's decision were invalid and the developer's only course is to apply under section 111 of the Highways Act 1959 for an order for the diversion of the highway.

The Secretary of State (the planning authority does not appear) claims that section 209 of the Act of 1971 on its proper construction does give

A power to the Secretary of State to act although development has been completed and although the highway has already been obstructed. Alternatively, it is claimed that all of the permitted development had not been completed, that development in accordance with planning permission remained to be done and that, consequently, there was a situation where the Secretary of State's decision could enable development to be carried out in the future.

B The alternative submission makes it necessary to see what work had actually been done. Work on house, No. 25, was begun in January 1976 and part of the house went over the footpath. Two houses, Nos. 20 and 21, were about 18 feet apart and one was on the east of the footpath and the other on the west. The tarmac drives to the garages of these houses were linked or merged and between them covered the line of the footpath C over the distance from the pavement to the garages. The footpath crossed the gardens of these houses and also the plots of two further houses, Nos. 34 and 36, which were to the north of Nos. 20 and 21. Although the public could still walk along the footpath line, save that No. 25 encroached over it, the path would be totally isolated from public use when the various plots were fenced.

The house numbered 25, appeared to have been completed externally D but inside it had not been decorated. A floorboard 14 feet long was missing and some cupboards had not been completely installed in the kitchen. The houses numbered 20 and 21 also appear to have been completed from the outside but inside neither had been decorated. Radiators and sanitary fittings had not been installed in house, No. 21, and floorboards had not been nailed down in the larder of house, No. 20.

E In his report to the Secretary of State the inspector remarked that the footpath had not yet been legally diverted and said:

> "For this reason Mr. Woodhead [the builder] is unable to sell the three plots and houses and to complete the development so far as he is concerned and so to enable the buildings to be occupied as dwelling-houses. So long as the public has a right to walk through these plots F people are not likely to buy the houses. The development permitted on plan C, away from the line of the path, is also incomplete and cannot be completed until the alternative route is known along which the path will be diverted."

He went on to say that he considered that it would be unfair to the developer to require him to pull down house, No. 25, (and possibly another G house).

An application to stop up or divert a highway may be made with the Secretary of State's consent to a magistrates' court under sections 110 and 111 of the Highways Act 1959.

Part X of the Town and Country Planning Act 1971 contains provisions for stopping up and diverting highways and provisions for safeguarding the public interest before a final order is made. The H considerations governing the making of an order are not precisely the same as those under the Highways Act 1959, although in some situations the order might well be obtainable under the procedure of either Act. The effect of Part X of the Town and Country Planning Act 1971 is to provide a comprehensive scheme in that Act for the development of land and the consequential interference with highways under the supervision of the Secretary of State. It is tidy and logical and ensures a consistent approach in deciding the merits of conflicting interests.

I turn now to consider the construction of section 209. The Secretary of State is empowered to " authorise the stopping up or diversion of any highway." Stopping up or diversion may refer to the past or the future. The words are as applicable to a highway which has already been diverted as to one which it is intended to divert. I cannot accept the argument that the word " authorise " is inappropriate to something already done. The first meaning in the *Shorter Oxford Dictionary* 3rd ed. (1944) vol. 1, p. 125, for the verb " to authorise " is given as " To set up or acknowledge as authoritative. To give legal force to; to sanction, countenance." Where " authorise " embodies the idea of future conduct, it is defined in the second meaning in that dictionary. I read section 209 as saying that the Secretary of State may acknowledge as authoritative or give legal force to or sanction the stopping up and, consequently, he may deal with a highway that has been stopped up or one that will be stopped up. Indeed, the above meaning of the word is borne out by section 209 (4), which provides:

> " An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment."

The Secretary of State has to be " satisfied that it is necessary to do so." This means that it is necessary to authorise the stopping up or the diversion. We then come to the words so strongly relied on by the applicants " in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act," etc. Mr. Payton for the applicants would have us read this as though " carried out " were equivalent to " begun." I cannot so read it. For something to be carried out it must of course be begun, but bearing in mind the use of the past participle it must also contemplate completion. Section 209 of the Act is not concerned with the possibility of the works being carried out from a physical or practical point of view. It is an enabling section and is concerned to remove what would otherwise be a legal obstacle (not a physical obstacle) to development. In other words, the authorisation has to be necessary in order to enable development to be carried out lawfully. If it has not yet been carried out lawfully, the purpose for which the Secretary of State is given power to " authorise " is still there as the basis for the exercise of that power. Thus far, then, I see nothing in the words of the section themselves to prevent the Secretary of State from authorising an already existing obstruction of the highway caused by development already carried out to completion. Mr. Payton, however, says that Parliament must be taken to have intended to discourage unlawful development and furthermore to deny assistance in any way to a developer who, as he put it, " has jumped the gun."

The development covered by the section is " development . . . in accordance with planning permission granted under Part III " of the Act. It is relevant therefore to see what development may be permitted under Part III. Section 32 (1) reads:

> " An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether—(*a*) the buildings or works were constructed or carried out, . . . or (*b*) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted."

A Clearly the legislature did envisage the possibility of legalising that which had already been done without permission. There is, however, no reference in section 32 to the obstruction of a highway. As the Act of 1971 envisages authorisation by the Secretary of State for development purposes and provides a comprehensive scheme (as I have already stated), it seems to me illogical that in a particular case where planning permission may be granted, namely under section 32, the Secretary of State should B have no power to authorise the stopping up. This would presumably be the case if " to be carried out " made authorisation impossible when the work had already obstructed the highway.

If the construction of section 209 is in any way ambiguous, I would resolve the ambiguity in favour of consistency in the operation of the scheme for every kind of permitted development envisaged by the Act. C Developers who act unlawfully would have to be dealt with by the penal provisions applicable to their conduct.

The matter does not stop there, however. Section 32 (2) reads:

> " Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in D subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly."

The words " and references in this Act to planning permission to develop E land or to carry out any development of land," etc., are of importance. The references are not limited to the sections contained in Part III of the Act. It is true that " applications for such permission " will be made under Part III, but there are references to " planning permission to develop land " and to " the carrying out of any development of land " elsewhere than in Part III. Section 209 refers to " development to be carried out in accordance with planning permission granted under F Part III "; that is to say, " planning permission to develop land," the expression used in section 32. Putting it another way, " planning permission granted under Part III of this Act " (the words of section 209) *is* " planning permission to develop land." Consequently, by virtue of section 32 (2), the words in section 209 must be construed to include planning permission for the retention on land of buildings or works G constructed or carried out, etc., as mentioned in subsection (1) of section 32. This makes it quite clear to my mind that Parliament cannot be said to have intended that there should be no authorisation when a highway had already been obstructed or when the development had already been carried out. In other words, it emphasises that what is being applied for is an order to enable development to be carried out lawfully. This must be so because ex hypothesi in a case to which section 32 refers, H the development has already been carried out on the ground. It is perfectly permissible, consequently, to read section 209 as saying that the Secretary of State may authorise the stopping up of any highway if he *is satisfied that it is necessary to do so in order to enable development* which has been carried out on the ground to be legalised.

I appreciate that it can be argued that the power of the Secretary of State to authorise development ex post facto should be limited to a case where planning permission has been applied for by virtue of section 32

itself. However, once one recognises that section 209 can apply to an application under section 32, the future tense as contended for by Mr. Payton cannot be upheld. An argument seeking to limit retrospective authorisation to the section 32 case can only be based on the argument that the developer who " jumps the gun " must be denied the procedure under section 209 if it is conceivably possible to do so. Such an argument really rests on an inferred intention to penalise such a person by forcing upon him the procedure provided by the Highways Act 1959. While the conditions for the exercise of the power to make an order under the Highways Act 1959 are not the same as those contained in the Town and Country Planning Act 1971, there are many cases where an order could be made under either Act.

Mr. Payton has contended for the applicants that in this present case the application falls to be deal with under section 111 of the Highways Act 1959. I do not see that any worthwhile advantage is to be obtained in this way. It is surely better for the Secretary of State who may have to consider the merits of the development permission, to consider at the same time the highway question. Moreover, it does not always follow that the developer is blameworthy. Genuine mistakes can occur. A builder might be prepared to say that he will pull the house down and start again. Why should not the Secretary of State give his authority in such a case? I regard section 209 as saying that if development is of the kind which involves obstruction of a highway, then the Secretary of State can give his authority so that the development can be carried out legally. Until his authority is given development, although carried out on the ground, has not been carried out legally. The Secretary of State is concerned to give legal status to a development of which he approves. He is not concerned to inquire how far, if at all, the work has been done.

I would dismiss this appeal.

GOFF L.J. I much regret that I am unable to accept Eveleigh L.J.'s conclusion that section 209 of the Town and Country Planning Act 1971 includes power for the Secretary of State to make a completely retrospective order, although on a more restricted construction of the section which I am prepared to adopt, I agree that this appeal should be dismissed.

I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid the possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed. It would also protect an innocent wrondoer, as in *Wood* v. *Secretary of State for the Environment* (unreported), June 27, 1975, where an order had actually been obtained before work started, but it was void for a technical irregularity and it was assumed that a further order could not be made under section 209 or 210.

However, I am driven to the conclusion that this is not possible in view of the words of futurity " to be carried out " which occur in section 209 (1), and I think this is emphasised by the sharp contrast with the expression in section 32 (1) " constructed or carried out, or a use of land instituted, before the date of the application."

Moreover, with all respect, I do not think that any anomaly is involved, in that if the work be started without planning permission, the

A developer will have to have recourse to section 32, and that contains no provision for authorising work upon the highway. The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply, whether or not planning permission was obtained before the work was done or started, and if it has not been finished the permission granted would have to be not only under section 32 to retain the work so far done, but also to authorise the rest, and that would bring in sections 209 B and 210. I do not see how the planning authority or the Secretary of State can be satisfied that an order is necessary " in order to enable development to be carried out " without ascertaining the factual situation in order to see whether there is in fact any part of the relevant permitted development left to be carried out or whether it has all been completed.

Moreover, one cannot escape this difficulty by holding that in law C there has been no development until the work is completed, because development occurs as soon as any work is done, and to say otherwise for the purposes of sections 209 and 210 would be inconsistent with the definition of development in section 22 (1), and with section 23 (1). Any work is a development, even if contrary to planning control: see section 87 (2). It cannot be any the less a development because it is unlawful for D an entirely extraneous reason, namely, that it is built upon the highway. Nor, I think, can it be said that the planning authority or the Secretary of State has to perform a paper exercise, looking only at the plan and ignoring the facts. This is possibly what the legislature ought to have said, but it has not said it. It would be necessary to do unwarranted violence to the language. One would have to read the section as if it said " to be carried out or remain," or " it is or was necessary."

E So I turn to the more limited alternative. Can it be said that if development on the highway has not been completed, then what remains to be done does show that it is necessary to make an order to enable development to be carried out, none the less so because the order will as from its date validate the unlawful exercise?

In my judgment, the answer to that question should be in the affirma- F tive, on the simple ground that what remains to be done cannot be carried out so long as what has already been done remains unlawful and liable to be removed, at all events where the new cannot physically stand alone. It would be a very narrow distinction to draw between that kind of case, for example, building an upper storey or putting on a roof, and a case where what remains to be done can stand alone but is only an adjunct, for example, a garage, of what has to be removed, the house.

G If necessary, I would say that any further building on the site of the highway, even although it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order.

Much reliance was placed by the applicants on paragraph 1 (2) (*c*) of Schedule 20 to the Town and Country Planning Act 1971, but I do not H think that that presents any unsurmountable difficulty. The words " is to be stopped up, diverted or extinguished " clearly refer only to the effect of an order, because the paragraph reads on " by virtue of the order." So it is in no way inconsistent with an order being made to give validity to what remains to be done and indirectly to what has been done in fact but unlawfully. The positioning of the notice is a little more difficult, because the ends or an end of the relevant part of the highway may already have disappeared, but the notice can still be given on the face of whatever

obstruction has been constructed. The general sense of the paragraph is perhaps against my construction, but it is only an administrative provision and certainly does not, in my view, exclude it.

Section 90 (1), which draws a distinction between carrying out and continuing, has caused me some difficulty, but this distinction is not repeated in the final provision in subsection (5) and I do not feel driven by this section from the alternative construction which I have proposed, which is beneficial and which I would adopt.

When it comes to the exercise of discretion, in my view the planning authority or the Secretary of State should disregard the fact that the highway has already been obstructed, for he ought not on the one hand to make an order he otherwise would not have made because the loss to the developer if no order be made would be out of all proportion to the loss to the public occasioned by the making of the order, for that loss the developer has brought upon himself, nor on the other hand should the planning authority or the Secretary of State, in order to punish the developer, refuse to make an order which he otherwise would have made. Punishment for the encroachment, which must in any event be invalid for the period down to the making of the order, is for the criminal law.

I should add finally that Mr. Payton for the applicants made much of the public policy of preserving amenities for ramblers; but in many cases this is not the point, because even if no order be made the developer may well, either before or after development starts, be able to obtain planning consent for revised plans and develop the site, so making the highway no longer a place for a ramble. The relevant considerations will be the desirability (if any) of keeping any substituted way off the estate roads, and the convenience of the way as a short cut, whether or not to a place where one can ramble, and if a diversion is proposed the relative convenience of the old and the new way, whether any different diversion would be better and whether in suitable cases diversion is necessary or whether the way may simply be stopped up.

For these reasons, I agree that this appeal should be dismissed.

STEPHENSON L.J. I am attracted by the construction put by Eveleigh L.J. on section 209 of the Town and Country Planning Act 1971, but I agree with Goff L.J. that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.

Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order *is* necessary in order to enable development *to be carried out* in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it *was* necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development *to have been carried out*. I cannot give what seem to me reasonably plain words that strained meaning unless it can be confidently inferred from their context or other provisions in the Act that that meaning would express Parliament's intention. And I do not find in any of the provisions of this Act to which we have been referred, including section 32, or in the provisions of the Highways Act 1959, any clear indication that what appears to be a requirement that the Secretary of State or a planning authority should be satisfied on the facts that something cannot be done in the future without a diversion order is

A intended to be a requirement that the Secretary of State or a planning authority should be satisfied on paper that something done in the past unlawfully needs to be legalised by a diversion order.

I am, however, in agreement with the view that, on the facts of this case, development was still being carried out which necessitated the authorisation of a diversion order at the time when the diversion order was authorised and confirmed. I agree with the deputy judge that on the B inspector's findings of fact it was then still necessary to enable a by no means minimal part of the permitted development to be carried out.

In my judgment, development which consists of building operations—and it may be development which consists of change of use, as to which I express no concluded opinion—is a process with a beginning and an end; once it is begun, it continues to be carried out until it is completed C or substantially completed. That fact of life may produce the deplorable result that the earlier the developer "jumps the gun" the better his chance of completing the development before the Secretary of State or the planning authority comes to consider whether it is necessary to authorise a diversion order. But it may not save the developer from unpleasant consequences and it does not enable me to attribute to the legislature an intention which it has not expressed.

D I agree that the appeal fails.

Appeal dismissed.
Secretary of State's costs to be paid by applicants.

E Solicitors: *Franks, Charlesly & Co. for Pearlman Grazin & Co. Leeds: Treasury Solicitor.*

[Reported by MISS HENRIETTA STEINBERG, Barrister-at-Law]

F

[CHANCERY DIVISION]

* WESTMINSTER CITY COUNCIL *v.* HAYMARKET PUBLISHING LTD.

[1979 W. No. 1223]

G

1979 Oct. 17, 18 Dillon J.

Rating—Unoccupied hereditament—Surcharge—Commercial building unoccupied for more than six months—Legal charge in favour of mortgagee prior in time to rating authority's charge —Whether rating authority's charge on all interests in land H *—Whether binding on purchasers from mortgagee—General Rate Act* 1967 (*c.* 9), *s.* 17*A* (*as amended by Local Government Act* 1974 (*c.* 7), *s.* 16)

On January 3, 1974, a company acquired certain commercial premises, which it charged by way of legal mortgage in favour of a bank, to secure all moneys and indebtedness present and future owing by the company to the bank. The premises remained empty and unused for a period extending beyond October 24, 1975, and a rating surcharge amounting to £16,940·93 became

Camden

Date: 17 August 2022
Our Reference: Legal/JL
Enquiries to: Jenny Lunn

Law and Governance
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Direct 020 7974 6007
Fax 020 7974 1920
e-mail: jennifer.lunn@camden.gov.uk
www.camden.gov.uk

Patrick Robinson
Town Legal LLP
10 Throgmorton Avenue
London EC2N 2DL

By email to: patrick.robinson@townlegal.com

Dear Mr Robinson

Stopping up proposal in Queen's Grove: 73-75 Avenue Road NW8 6JD

Thank you for your letter of 8 August 2022 addressed to Elliott Della of the Council's Engineering Service and your further letter of 16 August 2022 addressed to Jenny Rowlands, Chief Executive, which have both been passed to me to respond to.

In terms of your points raised, I comment as follows:

- The cover letter is simply to enclose the draft stopping up order. The draft stopping up order itself is correct and refers to the correct plan. Notice of the proposed order has also been published in the Camden New Journal and London Gazette and displayed on site, in accordance with the relevant statutory requirements.

- The purpose of the stopping up is to allow the boundary wall adjacent to Queen's Grove to be moved 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots, in accordance with planning permission reference 2020/3796/P. This is clearly set out in the officer's delegated planning report.

- The form of design was approved under planning permission reference 2020/3796/P. This is a planning issue and was dealt with as part of the planning process.

- In Ashby v Secretary of State for the Environment [1980] 1WLR 673 it was held that a stopping up order could be confirmed if the decision making body is satisfied that it is necessary to enable completion of the development to be carried out in accordance with the planning permission (*per Stephenson and Goff L.JJ.*) or in order to enable the development that has been carried out on the ground to be authorised (*per Everleigh L.J.*).

- In this case, the building of the new wall is partially complete, with a gap left for construction traffic into the garden. The Council is satisfied that the Development has not as yet completed and the stopping up order is necessary to enable the development to be completed in accordance with planning permission.

Andrew Maughan
Borough Solicitor

Any representations received into the proposed stopping up order during the consultation process (including your letters) will of course be fully considered by the Highway Authority before any decision is made on whether the order should be made. With this in mind, the Council has also forwarded your concerns to the applicant.

As you will be aware, if any objections cannot be resolved, the Highways Authority must notify the Mayor of London of the objections. The Mayor of London may require a local inquiry to be held to fully consider the objections, unless the Mayor of London decides, in the special circumstances of the case, the holding of such an inquiry is unnecessary.

I therefore look forward to hearing from you as to whether your objections still stand.

Yours sincerely,

Jenny Lunn
Lawyer, Law and Governance

Appendix 3

A copy of the objection from xxxxxxx

From: Sean Mclean
To: Elliott Della
Subject: FW: 73-75 Avenue Road, Attn. Elliot Della
Date: 24 August 2022 14:57:50
Attachments: image001.png
image002.png
image003.png

Hi Elliot

Please see email below.

FYI

Kind regards.

Sean Mclean
Business Support Apprentice

Telephone: 020 7974 2181

From:
Sent: 24 August 2022 10:51
To: Engineering Service - Public Email Address <engineeringservice@camden.gov.uk>
Subject: Re: 73-75 Avenue Road, Attn. Elliot Della

Please now, see the attached photographs, one taken from my first floor window, the other from my front door, today. In the first, the red circle only the left picks out the "summer house" mentioned in my first email. When I look properly at it, it's even worse. Size, footprint, detailing, finishes, height. The second photo is further illustration of all this. Does it really conform to a planning consent?

In the first photo, the red circle on the right shows a new building being constructed to the right of the first. Thus already looks like a repeat of the summer house, just smaller. Does it conform to a consent?

I look forward to hearing from you..

Regards

XXXXXX

07714 222890

On Wed, 17 Aug 2022, 13:35 wrote:

> Dear Elliot
>
> I hope you are well - it's been a while since we were in touch and with all the turnover in the Planning department I'm delighted that you've stuck it out.
>
> In case you've forgotten I live at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, UK, which is immediately across the road from the area in dispute, and we have the whole plot as our view to the north.
>
> You have already received the attached letter from XXXXXXXXXXX and his advisers, but this is to endorse, support and add my voice to everything in the letter.
>
> We have watched the development over 4 (?) years and while we have no complaints about the way the site has been managed, the disruption has been, and remains, considerable. To watch part of the pavement being taken over, which we had assumed was with consent, was an extremely peculiar moment. I'm very glad it has now come back to Camden, and hope you will not agree to this highly unusual and wholly unnecessary annexation of public space.
>
> I would note that since the rest of the very substantial development has been carried out meticulously and highly professionally, it's very difficult to believe that the decision by the owners not to apply for consent before these pavement works were undertaken was an accident, it seems more likely to have been a calculated ploy. I'm sure it's not in your remit to punish such arrogance, but by the same token I hope that considerations of the cost and disturbance to remove and relocate the perimeter to its original position will play no part in your determination.
>
> Separately, and in light of this breach of Planning Law and regulations, can you please confirm the following items are in accord with consents: (1) the bright red brick for the external facades of the building, and for all the perimeter walls, which is highly unusual and not at all in keeping with either the architecture of the building itself, or with its location in or bordering on the Conservation Area; and (2) the unbelievably grotesque metal and glass black over-sized "summer house" which sits squarely in our view in the garden of the plot.
>
> I cannot believe the Council could have consented to this latter, have you seen it as built? Or is it meant to be cloaked in some other material, or hidden by new landscaping or trees, or located somewhere more out of sight, or should it be much smaller?
>
> I look forward to your responses.
>
> Kind regards

Appendix 4

A copy of the Officer Report from planning application 2020/3796/P

Delegated Report (Members Briefing)	Analysis sheet	Expiry Date:	15/10/2020
	N/A	Consultation Expiry Date:	22/10/2020

Officer	Application Number(s)
David Peres Da Costa	2020/3796/P
Application Address	**Drawing Numbers**
73-75 Avenue Road London NW8 6JD	Refer to Draft Decision Notice

PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature

Proposal(s)

Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

Recommendation(s):	**Grant conditional planning permission subject to s106 legal agreement**
Application Type:	**Householder application**

Conditions or Reasons for Refusal:	**Refer to Draft Decision Notice**					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	**00**	No. of responses	**00**	No. of objections	**00**
Summary of consultation responses:	A site notice was displayed from 09/09/20 to 03/10/20. No comments have been received.					
CAAC/Local groups* comments: *Please Specify	**Elsworthy Residents Committee – object** It seems perverse to consider allowing the pavement in Queens Grove to be reduced by moving the position of the brick wall 500 mm. This at a time when Camden, and indeed all over the country, pavements are being widened to allow greater numbers of pedestrians to pass freely on the footpath. In order to protect the valuable trees there could be breaks in the brick wall and railings around the trees. The introduction of access gates for the bin store etc that open out onto the pavement of Queens Grove will be a hazard as has proved already elsewhere locally. They are left open for the bin collection, the bins are then left on the pavement and the doors remain open until it is remembered to come out, put the bins away and close them. All this will be out of sight for the occupants of the property but will be dangerous and an eyesore for those passing by, especially if the width of the footpath has been reduced. Please remember that the black and white tiled road sign 'Queen's Grove' (No doubt not saved when the wall was demolished) should be replaced on the new wall. *Officer's comment: The application has been revised and the bin store amended so that the doors would not open onto the pavement but rather would open onto the front garden. An email was sent to the Elsworthy Resident's Committee advising of this revision and the following additional comment was received.* I'm glad my comment regarding the hazard of the bin store has been understood and an effort has been made to effect a solution. However I still object to the pavement being narrowed by moving the wall out and the bins will still sit on the narrowed pavement, unseen from the house, being unsightly and blocking passage for passers-by until taken back in through the gate. I suggest that the bin store be incorporated in the front driveway. *Officer's comment: The reason for the location of the bin store on the side is to minimise its visual impact when viewed from principal rooms. The side elevation houses secondary accommodation where the view is not so important. It is understood that the bins would be taken out through the vehicular gates and placed on Avenue Road. However, should the bins be*					

	put out onto Queens Grove it is noted that this road is no different from any other street in the borough in that on waste collection days all bins are put out on to the public highway, emptied and then taken back in again. There is no reason to suggest the application site will be any different from any other property and even more so with a house such as this where staff will be present to ensure these matters are dealt with in a timely manner. *The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway.* *The erection of road signs is not a planning matter.*

Site Description

The application site is located on the corner of Avenue Road and Queen's Grove. Planning permission was granted 28/03/2012 (planning ref: 2011/2388/P) for a two storey dwelling with lower ground floor and basement. Construction of this is nearing completion.

The site is not located in a conservation area but the St John's Wood Conservation Area lies to the south-west of 38 and 37a Queen's Grove and the corner of the Elsworthy Conservation Area lies to the east of the junction of Elsworthy Road with Avenue Road diagonally opposite the site.

Relevant History

2011/2388/P: Erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building). Granted Subject to a Section 106 Legal Agreement 28/03/2012

2019/1366/P: Variation of condition 1 (approved plans) of planning permission 2011/2388/P dated 28/03/2012 (for erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building)), namely changes to detailed design and materials on all elevations including stone balustrade at roof level, stone finish to central bay and replacement of sash window with garage door (all to front elevation) including relocation of car lift; replacement of 2 storey bay on Queen's Grove elevation with single storey structure with terrace above; alterations to footprint and location of basement including additional lightwell and relocation of garden lightwell; replacement of orangery with contemporary pavilion with flat roof; new French doors to side elevation (north elevation); and erection of pergola in rear garden. Granted Subject to a Section 106 Legal Agreement 06/04/2020

Relevant policies

NPPF 2019

The London Plan March 2016, consolidated with alterations since 2011
Intend to Publish London Plan 2019

Camden Local Plan 2017
Policy A1 Managing the impact of development
Policy A3 Biodiversity
Policy A4 Noise and vibration
Policy D1 Design
Policy D2 Heritage
Policy T1 Prioritising walking, cycling and public transport
Policy T3 Transport infrastructure

Camden Planning Guidance
Design (adopted March 2019)
Amenity (adopted March 2018)
Transport (adopted March 2019)
Trees (March 2019)

Assessment

1. Proposal

1.1. The application seeks amendments to the approved boundary treatment along Avenue Road and Queen's Grove and also the replacement of the boundary treatment at the rear with no. 38 Queen's Grove and the side boundary with 77 Avenue Road. The proposal also includes the erection of a brick building to house an emergency generator and sub-station to the rear garden and a bin store to front garden. In detail, the following is proposed:

- Erection of a new boundary wall on the Avenue Road frontage with stone piers and timber clad gates. This is an amendment to the boundary treatment previously approved under planning reference 2011/2388/P as amended by 2019/1366/P.

- Erection of a new boundary wall on the Queen's Grove frontage. This would be moved 0.5m further out to safeguard the existing mature (TPO) trees (and their roots) along Queen's Grove and would include timber louvred access doors for the substation housing and two pedestrian access gates at either end of the frontage.

- Replacement of the boundary treatment where the site abuts adjoining properties consisting of erection of a new brick boundary wall at the rear with no. 38 Queen's Grove and new side wall with no. 77 Avenue Road; and

- Provision of a brick housing for a generator and substation and brick bin store in the garden curtilage.

Assessment

1.2. The main issues for assessment are design, amenity, transport and trees.

1.3. Design

1.4. The approved boundary treatment to Avenue Road would be amended and the vehicle gate flanked by a large pedestrian gate would be replaced by a vehicle gate flanked by two narrower pedestrian gates. The material of the approved piers on either side of the vehicle and pedestrian gates would be amended from brick to Portland stone. This would match the detailing of the main house. The height of the wall would be increased in height (by a maximum of 0.5m) close to the corner with Queen's Grove. The changes to the appearance of the Avenue Road boundary are considered minor and would be sympathetic to the host property and the streetscape.

1.5. The height of the approved Queen's Grove boundary would be increase by approximately 0.89m and would range in height from approx. 2.8m to 3m (the approved wall ranged in height from approx. 1.9m to 2.24m. While this is a significant increase in height, the height of the existing wall and trellis (now demolished) was 2.67m and therefore the increase in height would be relatively small when compared to the pre-existing wall and trellis. Furthermore, the proposed building housing the substation and generator would sit just below the height of the wall. Therefore if the wall were lower, the substation would be visible. The height of the wall is therefore necessary to ensure sure there is no adverse visual impact from the proposed sub-station and to safeguard the visual appearance of the local area. In this context, the height of the boundary wall is considered acceptable.

1.6. The boundary walls would be constructed from red handmade brick to match the main house. This would ensure consistency between the two elements.

1.7. The submission states that the existing walls with the neighbouring properties (no.38 &

no.77) are structurally unsound with large cracks. The proposal seeks to demolish the existing walls with trellis and rebuild, raising the wall height to just below the existing trellis height. This would provide a more secure boundary between adjoining properties and provides aesthetic consistency between all four boundary lines. The replacement boundary walls are therefore considered acceptable.

1.8. The generator and substation enclosure will be below the proposed boundary wall height so will not be visible from the street level. The detail design of the generator and substation enclosure is considered acceptable. The substation would be accessed from the Queen's Grove footway with doors which open onto the pavement. This is a requirement of UKPN. The double doors would be for any large plant that may be needed at any given time in the future and the single door would be for maintenance access. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations. Therefore, in this instance the doors opening onto the footway are considered acceptable. The bin store would be a relatively small enclosure positioned next to the side boundary wall and would not be visible from the public realm.

1.9. Amenity

1.10. The height of the proposed walls between the application site and the neighbouring properties to the rear and the side (no.38 & no.77) would be the same height as the existing wall with trellis. Therefore there would be minimal impact on neighbouring amenity in terms of daylight and sunlight or overbearing. The increase in the height of the boundary wall to Queen's Grove would likewise have minimal impact on neighbouring amenity as this wall is adjacent to the pavement and road. Likewise there would be no impact on neighbouring amenity from the bin store or the building housing the generator and sub-station.

1.11. <u>Noise</u>

1.12. The application proposes a brick building to house an electricity substation and emergency generator adjacent to the boundary wall with Queen's Gove. A noise report has been submitted to support the application and has been reviewed by the Council's noise officer. The lowest background noise level was 36dB. The Council's noise policy states that emergency equipment such as generators which are only to be used for a short period of time will be required to meet the noise criteria of no more than 10dB above the background level (L90 15 minutes). During standby periods, emergency equipment will be required to meet the usual criteria for plant and machinery. The noise report confirms that mitigation will be required to comply with the Council's noise criteria. A condition will be included to ensure the mitigation recommendations of the noise report are implemented. Further noise conditions will ensure that the equipment does not breach the Council's noise thresholds and will restrict the operation and testing of the emergency generator to protect neighbouring amenity.

1.13. Transport

1.14. The proposal was revised to omit the bin store doors opening onto the footway. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations.

1.15. The application seeks to move the boundary wall adjacent to Queen's Grove 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots. This would involve the narrowing of the existing footway. The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway. Therefore the loss of 0.5m of footway is considered acceptable in this

instance.

1.16. Highways have confirmed a stopping up order will be required. The current cost for processing the order is: £27,307.00. This would be secured by legal agreement.

1.17. The footway directly adjacent to the site is likely to sustain damage because of building the boundary wall. It is noted that a highways contribution (£56,000) was secured as part of the previous application (2011/2388/P**)** and no work has been implemented. Therefore these funds would still be available to be spent on the highway reinstatement and no further highways contribution would be required.

1.18. Trees

1.19. No trees are proposed to be removed in order to facilitate development. The arboricultural method statement is considered sufficient to demonstrate that the trees to be retained will be adequately protected in accordance with BS5837:2012. A condition will be included to require the works would be undertaken under the supervision and monitoring of the retained project arboriculturalist in consultation with the Council's Tree and Landscape Officer.

1.20. Conclusion

1.21. Grant conditional planning permission subject to s106 legal agreement

1.22. Heads of terms:

- Highways contribution
- Stopping up order

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 23rd November 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Appendix 5

A copy of the S106 agreement from planning application 2020/2796/P

DATED 3RD MARCH 2021

(1) WEI-LYN LOH

and

(3) EFG PRIVATE BANK LIMITED

and

(4) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN

AGREEMENT

relating to land known as
73-75 Avenue Road
London NW8 6JD
pursuant to
Section 106 of the Town and Country Planning Act 1990 (as amended);
Section 16 of the Greater London Council (General Powers) Act 1974;
Section 111 of the Local Government Act 1972; Section 1(1) of the Localism Act 2011;
and Section 278 of the Highways Act 1980

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 5826

CLS/COM/ESA/1800.1760
s106 FINAL

THIS AGREEMENT is made the 3rd day of March 2021

B E T W E E N:

A. **WEI-LYN LOH** of Flat 24, Welbeck House, 62 Welbeck Street, London W1G 9XE (hereinafter called "the Owner") of the first part

B. **EFG PRIVATE BANK LIMITED** (Co. Regn. No.2321802) of Leconfield House, Curzon Street, London W1J 5JB (hereinafter called "the Mortgagee") of the second part

C. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

1. **WHEREAS**

1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL911641 subject to a charge to the Mortgagee.

1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.

1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 20 August 2020 and the Council resolved to grant permission conditionally under reference number 2020/3796/P subject to the conclusion of this legal Agreement.

1.4 The Council is the local planning authority for the purposes of the Act and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

1.5 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.6 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL911641 and dated 19 February 2019 is willing to enter into this Agreement to give its consent to the same.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

2.1	"the Act"	the Town and Country Planning Act 1990 (as amended)
2.2	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act
2.3	"the Development"	replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove). as shown on drawing numbers:- A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220
2.4	"the Implementation Date"	the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
2.5	"Occupation Date"	the date when any part of the Development is occupied and

		the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.6	"the Parties"	mean the Council the Owner and the Mortgagee
2.7	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 20 August 2020 for which a resolution to grant permission has been passed conditionally under reference number 2020/3796/P subject to conclusion of this Agreement
2.8	"Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.9	"the Planning Permission"	a planning permission granted for the Development substantially in the draft form annexed hereto
2.10	"the Property"	the land known as 73-75 Avenue Road London NW8 6JD the same as shown shaded green on Plan 1 annexed hereto
2.11	"Stopping Up Application"	means an application made by the Owner to the Council to authorise the stopping up of the Stopping Up Area pursuant to section 247 or section 253 of the Act
2.12	"Stopping Up Area"	means part of the carriageway and footway at 73-75 Avenue Road as shown for indicative purposes (to be agreed by the Council in writing prior to submission of the Stopping Up Application) coloured red on Plan 2 annexed to this Agreement
2.13	"Stopping Up Contribution"	means the sum of £27,307.00 to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the council in connection with the Stopping Up Measures
2.14	"Stopping Up Measures"	means all procedures (including statutory and internal Council procedures and consultation) required to facilitate the stopping up of the Stopping Up Area pursuant to section 247 of the Act to enable to the Development to be carried out in accordance with the Planning Permission whether or not such procedures result in the obtaining of the Stopping Up Order

2.15	"Stopping Up Order"	means a statutory order authorising the stopping up of the Stopping Up Area

3. **NOW THIS DEED WITNESSETH** as follows:-

3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.

3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.

3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.

3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.

3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.

3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.

3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **Stopping Up Application**

4.1.1 On or prior to Implementation of the Development the Owner will submit to the Council the Stopping Up Application.

4.1.2 Within 5 days of the Council accepting the Stopping Up Application to pay the Stopping Up Contribution in full.

4.1.3 Not to Implement or to allow Implementation of the Development until such time as the Stopping Order has been made.

4.1.4 To pay the Council's further reasonable costs incurred in connection with the Stopping Up Measures including where reasonably requested payments on account, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such further costs.

4.1.5 On completion of the Stopping Up Measures the Council will provide to the Owner a certificate specifying the sum expended by the Council in carrying out the Stopping Up Measures ("the Stopping Up Measures Certified Sum").

4.1.6 If the Stopping Up Measures Certified Sum exceeds the Stopping Up Contribution and any other sums already paid on account by the Owner in respect of the Council's reasonable costs in carrying out the Stopping Up Measures then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such excess sums.

4.1.7 Not to restrict or to allow the restriction of public access to the Stopping Up Area unless and until the Stopping Up Order has been made and in the event of non-

compliance with this sub-clause the Owner shall forthwith take any steps required by the Council to remedy such non-compliance.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.

5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2020/3796/P the date upon which the Development will be ready for Occupation.

5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.

5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2020/3796/P.

5.7 Payment of any contributions pursuant to Clause 4 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2020/3796/P. Electronic Transfer be made directly to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.

5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Office for National Statistics at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \frac{x\ (Y-X)}{X}$$

5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ and sent to planning obligations on PlanningObligations@camden.gov.uk quoting the planning reference number 2020/3796/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

6.2 This Agreement shall be registered as a Local Land Charge.

6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.

6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.

6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights,

powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

6.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of Development this Agreement shall forthwith determine and cease to have effect.

7. MORTGAGEE EXEMPTION

7.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

7.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

8. RIGHTS OF THIRD PARTIES

8.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)
WEI-LYN LOH)
in the presence of:)

.....

Witness Signature

Witness Name:

Address:

Occupation:

EXECUTED AS A DEED BY) [redacted]
EFG PRIVATE BANK LIMITED)
by Helen Price)
in the presence of:-) odgers. W1 4 9AD.
147 west kensin

..[redacted]

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

.....[redacted].

Authorised Signatory

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)
WEI-LYN LOH)
In the presence of:)

[redacted]

.....

Witness Signature

Witness Name: ARVAL LOH-GRONAGER

Address: FLAT 29 WELBECK HOUSE, 62 WELBECK STREET, LONDON, W1G 9XE

Occupation: COMPANY DIRECTOR

EXECUTED AS A DEED BY)
EFG PRIVATE BANK LIMITED)
by Helen Price)
In the presence of:-)

[redacted]

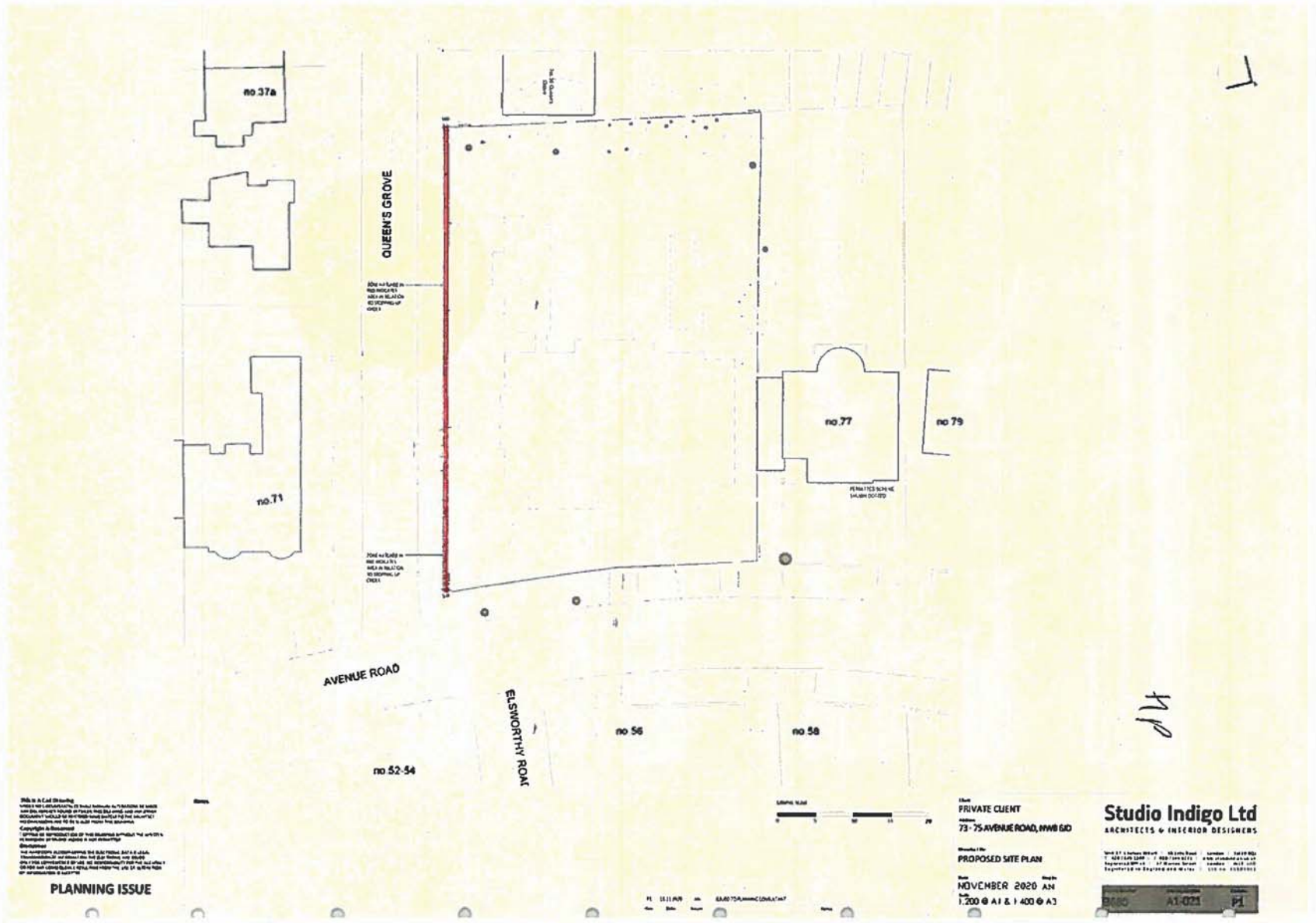
odgoods
W14 9AD. 147 West Kens,

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

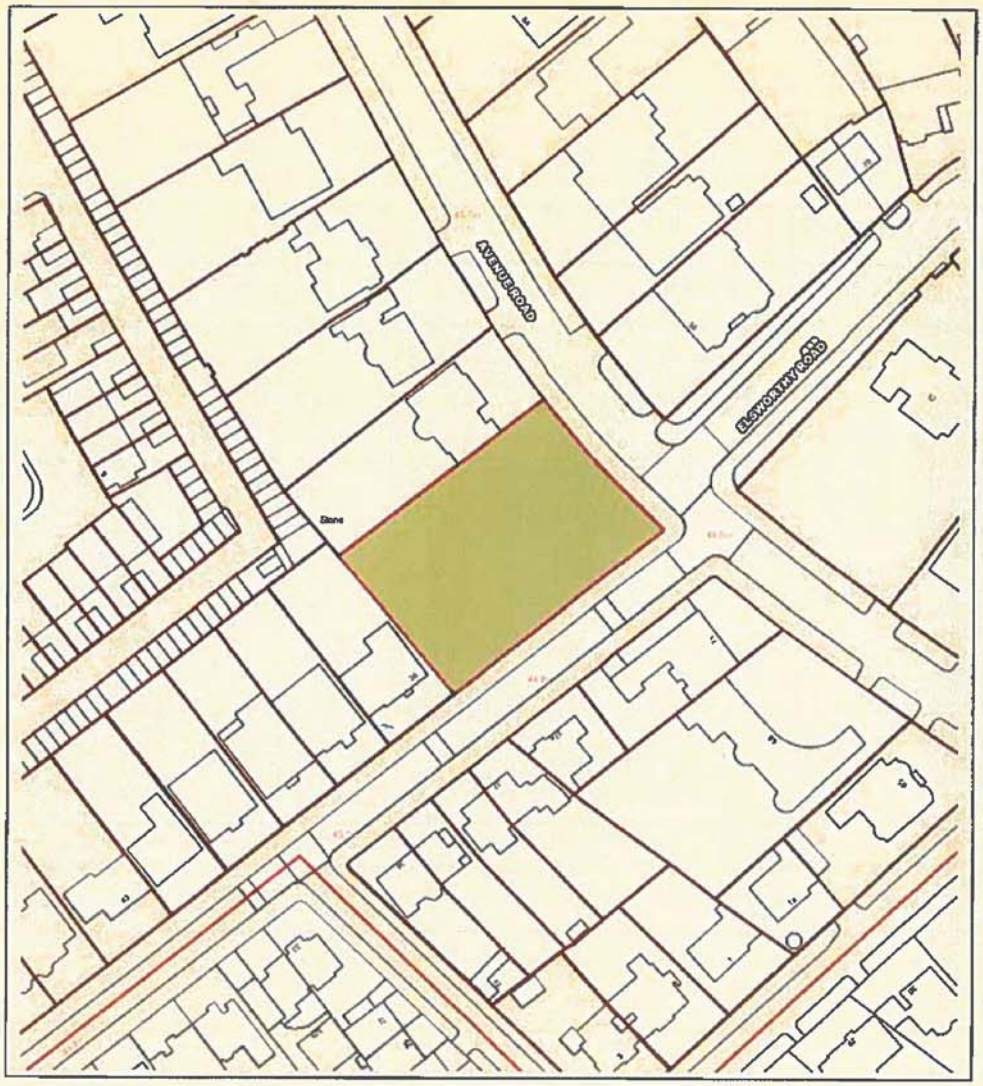
[redacted]

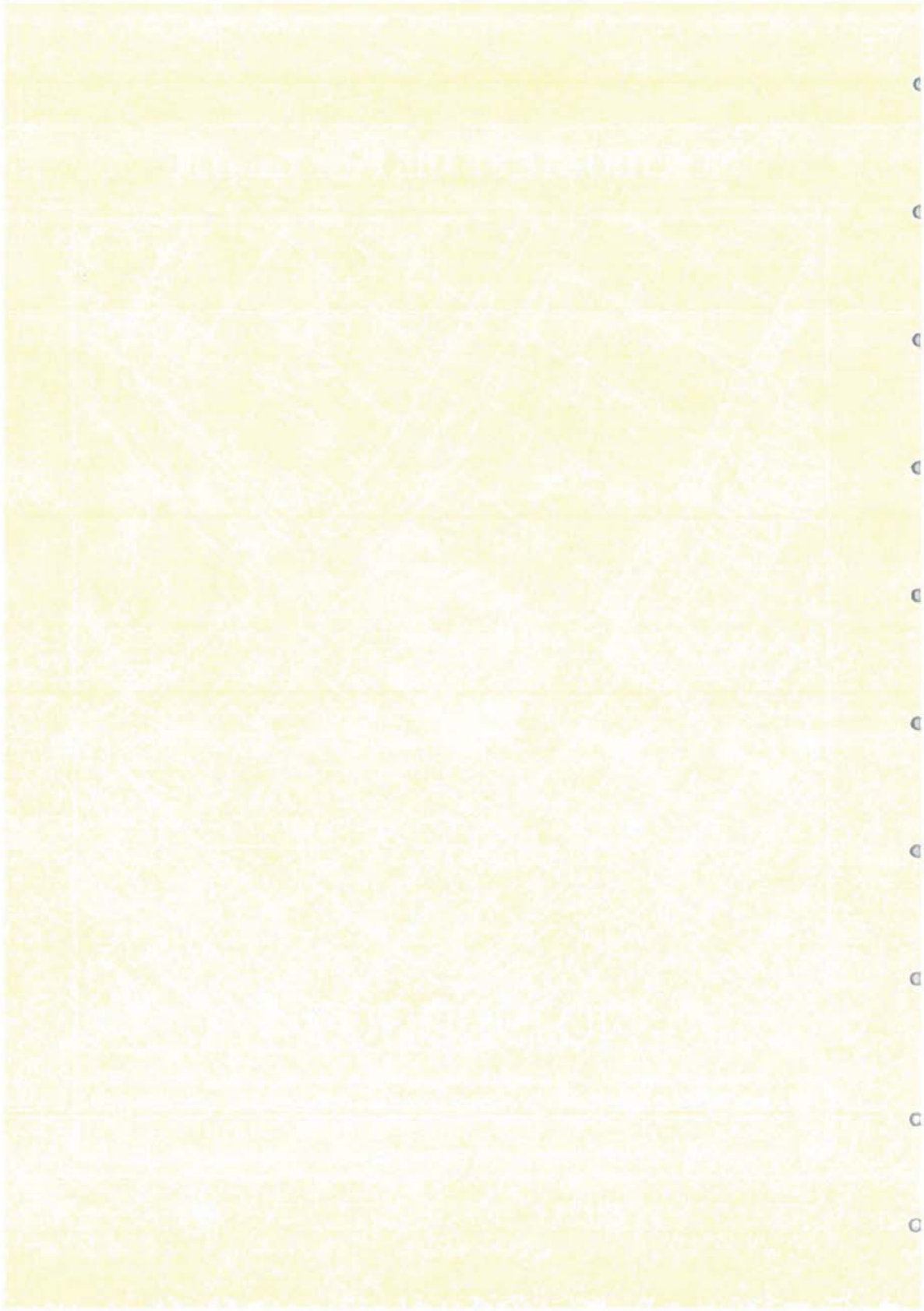
.....

Authorised Signatory


no.37a
QUEEN'S GROVE
no.71
no.77
no 79
AVENUE ROAD
ELSWORTHY ROAD
no 56
no 58
no 52-54
PLANNING ISSUE
PRIVATE CLIENT
73-75 AVENUE ROAD, NW8 6JD
PROPOSED SITE PLAN
NOVEMBER 2020 AN
1:200 @ A1 & 1:400 @ A3
Studio Indigo Ltd
ARCHITECTS & INTERIOR DESIGNERS
A1-021
P1

NORTHGATE SE GIS Print Template





Application ref: 2020/3796/P
Contact:
Tel: 020 7974
Date: 4 December 2020

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

TJR Planning
Suite 3 The Mansion
Wall Hall Drive
Aldenham
WD25 8BZ

Dear Sir/Madam

FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION
Town and Country Planning Act 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:
73-75 Avenue Road
London
NW8 6JD

Proposal:
Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).
Drawing Nos: A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the London Borough of Camden Local Plan 2017.

3 The development hereby permitted shall be carried out in accordance with the following approved plans:

A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

Reason: For the avoidance of doubt and in the interest of proper planning.

4 Noise mitigation

Before the first operation of the generator hereby approved, the generator shall be provided with sound attenuation measures in accordance with the recommendations set out in the Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020 hereby approved. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy A1 and A4 of the London Borough of Camden Local Plan 2017.

5 Noise from emergency generators

Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

6 Emergency generator operation

The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

7 Emergency generator testing

Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

8 Tree protection / supervision and monitoring

Prior to the commencement of works on site, tree protection measures shall be installed and working practices adopted in accordance with the arboricultural impact assessment by ArborTrack Systems Ltd entitled "Method statement for the avoidance of physical damage to roots during boundary wall demolition & construction at 73-75 Avenue Road London NW8 6JD" dated 14th July 2020. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with BS5837:2012 and with the approved protection details. The works shall be undertaken under the supervision and monitoring of the retained project arboriculturalist and with ongoing consultation with the Council's Tree and Landscape Officer.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the Camden Local Plan.

Informative(s):

1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).

2 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of

proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Supporting Communities Directorate

Appendix 6

Copy of photos of the wall/ site of the stopping up order

Photo 1: Showing the temporary hording next to the constructed brick wall

Photo 2: Showing the wall where the hording and the wall meet

Photo 3: Showing the wooden frame of the hording from the top and the incomplete top of the brick wall.

Photo 4: showing the wooden frame of the hording from the top

Photo 5: Showing the hording, the wall and one of the trees mentioned in the Planning Officers report

Photo 6: Showing the "brick" pattern covering for the hording.

Photo 7: Showing the 3metre hording / gap in the wall measured using a wheel.

Photo 1

Photo 2

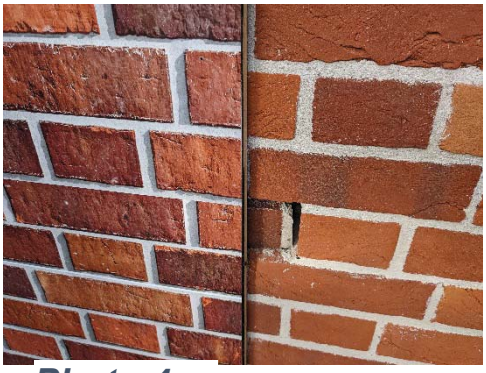


Photo 3

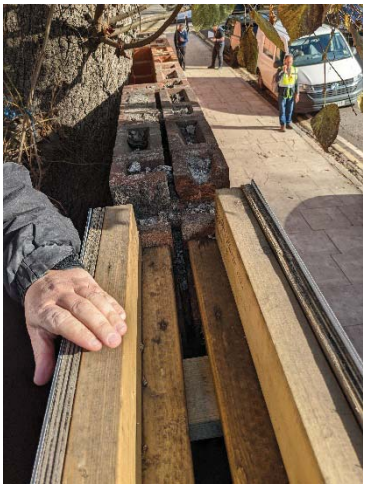


Photo 4

Photo 5

Photo 6

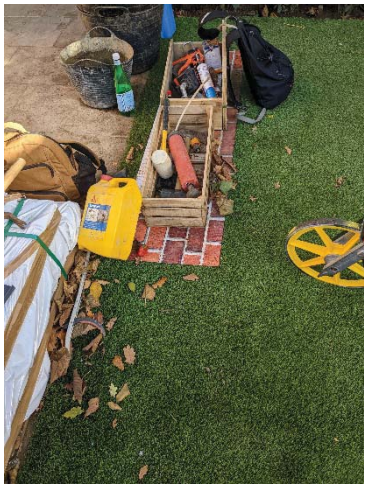


Photo 7

Appendix 7

A copy of the objection from Thames Water and Request for Access and Amended Draft Order

From:	Devcon Team
To:	Elliott Della
Subject:	Your Ref: ES/I&M/ED/1/22/S247 Our Ref: 14706
Date:	29 July 2022 12:07:24
Attachments:	image002.png image001.png

29 July 2022

STOPPING UP: Queen's Grove: Part of footway at the side of 73-75 Avenue Road NW8 6JD

Dear Sir / Madam,

Thank you for your recent correspondence with regards to the above location.

Our records show that Thames Water has apparatus in the area you are proposing to carry out your works.

We may be willing to rely on the rights preserved in the Order under Section 261 (4) of the Town and Country Planning Act in respect of apparatus in the land. However, before we can determine this could you please confirm that our apparatus will not be affected by the proposed works, that our rights of access will not be impeded and that there are no proposals to build over or close to our apparatus.

If we are not satisfied with your assurances, you will hear back from us within 10 working days of receipt outlining our reasons. If you do not hear from us, we have no further comments to make.

Yours Sincerely

Saira Irshad
Developer Services - Planner
020 3577 9998
devcon.team@thameswater.co.uk

Maple Lodge STW, Denham Way, Rickmansworth, WD3 9SQ
Find us online at developers.thameswater.co.uk

Visit us online www.thameswater.co.uk , follow us on twitter www.twitter.com/thameswater or find us on www.facebook.com/thameswater. We're happy to help you 24/7.

LONDON BOROUGH OF CAMDEN
TOWN AND COUNTRY PLANNING ACT 1990
SECTION 247
GREATER LONDON AUTHORITY ACT 1999

THE STOPPING UP OF HIGHWAYS (LONDON BOROUGH OF CAMDEN) (NUMBER 1) ORDER 2022 MADE:

QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD

The London Borough of Camden makes this order in the exercise of its powers under Section 247 of the Town and Country Planning Act 1990 as amended by Section 270 and Schedule 22 of the Greater London Authority Act 1999 and of all other enabling powers: -

The London Borough of Camden authorises the stopping up of the areas of highway described in the First Schedule to this Order and shown on the attached drawing solely in order to enable the development described in the Second Schedule to this Order, to be carried out in accordance with the planning permission, granted under Part III of the Town & Country Planning Act 1990, by the London Borough of Camden on the 3rd March 2021 under reference 2020/3796/P, for the works described in the Second Schedule to this Order.

1. This Order shall come into force on _____ and may be cited as the Stopping Up of Highways (London Borough of Camden) (Number 1) Order 2022.

2. This order will not change the rights of any statutory utilities to access and maintain their plant.

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

……

Authorised Signatory

THE FIRST SCHEDULE

Areas of highway to be Stopped Up

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

THE SECOND SCHEDULE

The Location
73-75 Avenue Road NW8 6JD.

The Development
Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

LONDON BOROUGH OF CAMDEN
TOWN AND COUNTRY PLANNING ACT 1990
SECTION 247
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BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

……

Authorised Signatory

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TOWN LEGAL LLP

Elliott Della
Director of Environment and Sustainability
London Borough of Camden
Room 4N/5PS
Judd Street
London
WC1H 8EQ

10 Throgmorton Avenue
London
EC2N 2DL

townlegal.com

T: 020 3893 0370
D: 020 3893 0385
E: patrick.robinson
@townlegal.com

By email: engineeringservice@camden.gov.uk

Your ref: ES/I&M/ED/1/225247
Our ref: EPGR
8 August 2022

Dear Mr Della

Stopping up proposal in Queen's Grove: 73-75 Avenue Road NW8 6JD

We act for the owners of XXXXXXXXXXXXX, who have received a communication from you, informing them of your proposal to make an Order under section 247 of the Town and Country Planning Act 1990, in order to close part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

On behalf of our clients, please record this as a formal objection, both on the encroachment, and to the improper use of a statutory power which is unavailable in the circumstances of this case. The encroachment that has occurred constitutes an illegal trespass on and obstruction of the highway, which is a criminal offence. How the highway authority has stood by and allowed this to happen warrants further investigation.

Before turning to the substance of the matter, may we point out that the letter you have sent is highly confusing, and will puzzle recipients, if the same form has been used with all parties notified. Whereas the draft Order correctly identifies what we assume to be the site of the proposed closure, the covering letter refers to a site in Cypress Place from Maple Street to Howland Street as shown on drawing CA4312/SK003/B – whatever that may be. We assume, but please confirm, that the reference to Cypress Street is a straightforward error. It risks making a nonsense of the public consultation.

As to the proposed narrowing of the footway purely to benefit the private interests of the householder of the double plot, our client takes strong exception to the form of the design, which entirely unnecessarily encroaches over the boundary. The elements of the development that have been located on the public highway could have been effortlessly positioned within the plot. It creates a wholly unwarranted and undesirable precedent that your authority will have difficulty resisting in other comparable situations.

Furthermore, there is an unsurmountable legal obstacle to your proposed use of the section 247 procedure, in a situation where, as is the case here, the works have been carried out and completed. We refer you to the attached Court of Appeal decision in **Ashby v Secretary of State for the Environment [1980] 1WLR 673.**

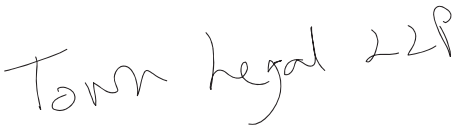
There the Court of Appeal decided – and this is still the law – that where works have been finished, the power (in 1979, the provision was section 209 of the 1971 Act) is no longer available. The point is expressly addressed by a majority of the Court of Appeal. Your attention is also drawn to para P247.05 of the Planning Encyclopaedia, Vol 2.

On the basis that the works project out onto the public highway, would you care to explain under what power the trespass could be considered lawful in its current condition ?

We look forward to your response.

Kindly acknowledge receipt.

Yours faithfully



Town Legal LLP

time and place for hearing the application. In *In re Marendez* the registrar refused to fix the time and place for hearing. The debtor appealed against that. The appeal was not heard until after the receiving order. At the time the receiving order was made therefore, the application to set aside the bankruptcy notice had never been heard at all. The refusal to fix a hearing was effected merely by the registrar indorsing the affidavit "No cause shown," or some similar words, and without a hearing. Rule 179 prohibits the making of a receiving order until the application to set aside the bankruptcy notice has been heard. As I have said, when the receiving order was made in *In re Marendez*, the application had not been heard, the registrar having refused to fix a date and time for hearing. Thus the issue in *In re Marendez* was whether the application could be said to have been heard prior to the determination of the appeal by the Divisional Court. That being said, and although we have only a very brief note of the judgment in *In re Marendez*, I think it is very probable that my observations were on any view too widely expressed, having regard in particular to *In re A Debtor (No. 10 of 1953), Ex parte the Debtor* v. *Ampthill Rural District Council* [1953] 1 W.L.R. 1050 which was not cited to the court in *In re Marendez*. I agree with Browne-Wilkinson J. that the latter case, *In re A Debtor (No. 10 of 1953)*, is directly in point in the present case and covers the present point.

In the circumstances, I agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors: *Adlers and Aberstones.*

[Reported by MISS HILARY PEARSON, Barrister-at-Law]

[COURT OF APPEAL]

* ASHBY AND ANOTHER *v.* SECRETARY OF STATE FOR THE ENVIRONMENT AND ANOTHER

1979 Oct. 31; Nov. 1; Dec. 11 — Stephenson, Goff and Eveleigh L.JJ.

Highway — Public path — Diversion order — Housing development obstructing footpath begun before diversion order published— Whether Secretary of State empowered to confirm order—Town and Country Planning Act 1971 (*c.* 78), *ss.* 209 (1), 210 (1)

In 1962 outline planning permission was granted to a developer for a housing development of 40 houses on a plot through which a public footpath ran. When detailed approval was sought, consideration was given to diverting the footpath. Permission was given to the developer and work commenced in 1976. A diversion order was made in respect of the footpath under sections 209 (1) and 210 (1) of the Town and Country Planning Act 1971. That was confirmed by the Secretary of State after a public inquiry in 1977. The applicants applied to

the Queen's Bench Division for an order quashing the Secretary of State's decision on the ground that some of the houses were nearly complete and it was not within his powers under section 209 (1) to validate development that had begun. After finding that some permitted development remained to be completed, the deputy judge refused to quash the decision, holding that the diversion order was necessary to enable the remaining work to be completed and that the Secretary of State could confirm the diversion of a footpath under section 209 (1) if he were satisfied that it was necessary to enable the development to be carried out in accordance with planning permission.

On appeal by the applicants:—

Held, dismissing the appeal, that the confirmation of the diversion order was valid as (*per* Eveleigh L.J.) on the true construction of section 209 (1) of the Town and Country Planning Act 1971 the Secretary of State might confirm the order stopping up or diverting the footpath if he were satisfied that it was necessary in order to enable development which had been carried out on the ground to be legalised (post, pp. 678 D–F, 679H) or (*per* Stephenson and Goff L.JJ.) the development on the footpath not having been completed, what remained to be done showed that it was necessary for the purposes of section 209 (1) to make an order to enable the development to be carried out (post, pp. 681E–G, 683A–B).

Decision of Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division affirmed.

The following case is referred to in the judgment of Goff L.J.:

Wood v. *Secretary of State for the Environment* (unreported), June 27, 1975.

The following additional cases were cited in argument:

Jones v. *Bates* [1938] 2 All E.R. 237, C.A.

Lucas (F.) & Sons Ltd. v. *Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491.

Reg. v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891; [1975] 3 W.L.R. 172; [1975] 3 All E.R. 243, C.A.

Thomas David (Porthcawl) Ltd. v. *Penybont Rural District Council* [1972] 1 W.L.R. 1526; [1972] 3 All E.R. 1092, C.A.

APPEAL from Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division.

The applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, by a notice of motion dated March 9, 1978, sought an order to quash and set aside the order of the Secretary of State for the Environment dated November 2, 1977, whereby he confirmed the order of the planning authority, the Kirklees Metropolitan District Council, made under section 210 of the Town and Country Planning Act 1971, known as the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. The grounds of the application were: (1) that the Secretary of State's decision was not within his powers under the Act of 1971; (2) that, the footpath being obstructed so as to be impassable, the Secretary of State and the planning authority could not be satisfied that it was necessary to divert the footpath in order to enable development to be carried out in accordance with planning permission under Part III of the Act; (3) that the Secretary of State and the planning authority were wrong in holding that they could be so satisfied if any development remained to be completed; (4) that they should have held that, once development had taken place to an extent that it

A obstructed the footpath, then they could not be so satisfied; (5) that, alternatively, the Secretary of State wrongly held that the permitted development had not been completed by reason of the internal works to some of the houses and the layout of land in curtilages; and (6) that there was no evidence on which the Secretary of State could reasonably conclude that the layout of the land in curtilages formed any part of the permitted development which remained to be completed.

B The deputy judge dismissed the application on July 13, 1978, holding, inter alia, that the Secretary of State could authorise the diversion of a footpath under section 209 (1) of the Act if he was satisfied that it was necessary to enable development to be carried out lawfully in accordance with planning permission and that the order had been properly confirmed by the Secretary of State. The applicants appealed against the deputy C judge's decision on the grounds that (1) on a proper construction of section 209 (1) of the Act of 1971, the power to authorise the diversion of a public footpath was to facilitate the proposed development and that the powers created under sections 209 and 210 of the Act could not be exercised so as to validate development already carried out; (2) the deputy judge was wrong in holding that he was entitled to consider another part of the development, not directly affected by the footpath, in deciding D whether the development had been carried out; and (3) the proper procedure should have been an application under section 111 of the Highways Act 1959, in which case objectors would have been entitled to invite the Secretary of State to consider other criteria; whereas the procedure adopted effectively encouraged developers to carry out unlawful development, thereby prejudicing the objectors' rights and the consider-E ation of the merits of their objections.

The facts are stated in the judgment of Eveleigh L.J.

Barry Payton for the applicants.
Jeremy Sullivan for the Secretary of State.
The planning authority was not represented.

F

Cur. adv. vult.

December 11. The following judgments were read.

STEPHENSON L.J. I will read first the judgment of Eveleigh L.J. who G is not able to be here this morning.

EVELEIGH L.J. This is an appeal against the refusal of the deputy judge to quash a decision by the Secretary of State concerning a footpath diversion order made by the Kirklees Metropolitan District Council, the planning authority under section 210 of the Town and Country Planning Act 1971.

H In 1962 outline planning permission was granted for housing development on an area of land through which ran a public footpath. Approval of the details of residential development for 40 houses was given on September 5, 1975, to a Mr. Woodhead, a builder. The proposed development involved obstruction of the footpath at a number of points and so the question of diversion arose. On September 4, 1975, the advisory panel on footpaths of the planning accepted a proposed route for the diversion. In January 1976 the builder laid out an alternative

footpath and started work on a house, No. 25, which obstructed the footpath before the planning authority had published a diversion order and of course before any application was made to the Secretary of State. For that he was fined £80 and ordered to pay £100 costs.

On March 15, 1976, the planning authority made a diversion order in respect of a new route. After objections had been received and a public meeting had rejected this diversion, the planning authority devised another route for the footpath which became the subject of the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. After a local inquiry, the Secretary of State confirmed the order. It is this decision which is the subject of the present appeal.

Section 210 (1) of the Town and Country Planning Act 1971 reads:

> "Subject to section 217 of this Act, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 209 (1) of this Act."

Section 217 (1) reads:

> "An order made under section 210 . . . of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it."

As the order made under section 210 was opposed, confirmation by the Secretary of State was required. Section 217 (2) reads:

> "The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 210 . . . to be satisfied."

Thus, the planning authority and the Secretary of State have to be satisfied of the matters referred to in section 209. Section 209 (1) reads:

> "The Secretary of State may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, or to be carried out by a government department."

It is on the interpretation of this subsection that this appeal depends. For the applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, emphasis is placed upon the words "to be carried out." It is said that these words relate to the future and cannot apply where development has begun or, alternatively and a fortiori, where development has been completed. It is argued that there is no power to ratify past activities which would only encourage developers to "jump the gun." The whole of Part X of the Act in which the relevant sections are contained and provisions in Schedule 20 and section 215 of the Act for objectors to be heard and inquiries to be held indicate that the purpose of those provisions is to prevent premature unlawful development where a highway will be obstructed. In the present case, therefore, the order and the Secretary of State's decision were invalid and the developer's only course is to apply under section 111 of the Highways Act 1959 for an order for the diversion of the highway.

The Secretary of State (the planning authority does not appear) claims that section 209 of the Act of 1971 on its proper construction does give

A power to the Secretary of State to act although development has been completed and although the highway has already been obstructed. Alternatively, it is claimed that all of the permitted development had not been completed, that development in accordance with planning permission remained to be done and that, consequently, there was a situation where the Secretary of State's decision could enable development to be carried out in the future.

B The alternative submission makes it necessary to see what work had actually been done. Work on house, No. 25, was begun in January 1976 and part of the house went over the footpath. Two houses, Nos. 20 and 21, were about 18 feet apart and one was on the east of the footpath and the other on the west. The tarmac drives to the garages of these houses were linked or merged and between them covered the line of the footpath C over the distance from the pavement to the garages. The footpath crossed the gardens of these houses and also the plots of two further houses, Nos. 34 and 36, which were to the north of Nos. 20 and 21. Although the public could still walk along the footpath line, save that No. 25 encroached over it, the path would be totally isolated from public use when the various plots were fenced.

The house numbered 25, appeared to have been completed externally D but inside it had not been decorated. A floorboard 14 feet long was missing and some cupboards had not been completely installed in the kitchen. The houses numbered 20 and 21 also appear to have been completed from the outside but inside neither had been decorated. Radiators and sanitary fittings had not been installed in house, No. 21, and floorboards had not been nailed down in the larder of house, No. 20.

E In his report to the Secretary of State the inspector remarked that the footpath had not yet been legally diverted and said:

> "For this reason Mr. Woodhead [the builder] is unable to sell the three plots and houses and to complete the development so far as he is concerned and so to enable the buildings to be occupied as dwelling-houses. So long as the public has a right to walk through these plots F people are not likely to buy the houses. The development permitted on plan C, away from the line of the path, is also incomplete and cannot be completed until the alternative route is known along which the path will be diverted."

He went on to say that he considered that it would be unfair to the developer to require him to pull down house, No. 25, (and possibly another G house).

An application to stop up or divert a highway may be made with the Secretary of State's consent to a magistrates' court under sections 110 and 111 of the Highways Act 1959.

Part X of the Town and Country Planning Act 1971 contains provisions for stopping up and diverting highways and provisions for safeguarding the public interest before a final order is made. The H considerations governing the making of an order are not precisely the same as those under the Highways Act 1959, although in some situations the order might well be obtainable under the procedure of either Act. The effect of Part X of the Town and Country Planning Act 1971 is to provide a comprehensive scheme in that Act for the development of land and the consequential interference with highways under the supervision of the Secretary of State. It is tidy and logical and ensures a consistent approach in deciding the merits of conflicting interests.

I turn now to consider the construction of section 209. The Secretary of State is empowered to " authorise the stopping up or diversion of any highway." Stopping up or diversion may refer to the past or the future. The words are as applicable to a highway which has already been diverted as to one which it is intended to divert. I cannot accept the argument that the word " authorise " is inappropriate to something already done. The first meaning in the *Shorter Oxford Dictionary* 3rd ed. (1944) vol. 1, p. 125, for the verb " to authorise " is given as " To set up or acknowledge as authoritative. To give legal force to; to sanction, countenance." Where " authorise " embodies the idea of future conduct, it is defined in the second meaning in that dictionary. I read section 209 as saying that the Secretary of State may acknowledge as authoritative or give legal force to or sanction the stopping up and, consequently, he may deal with a highway that has been stopped up or one that will be stopped up. Indeed, the above meaning of the word is borne out by section 209 (4), which provides:

> " An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment."

The Secretary of State has to be " satisfied that it is necessary to do so." This means that it is necessary to authorise the stopping up or the diversion. We then come to the words so strongly relied on by the applicants " in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act," etc. Mr. Payton for the applicants would have us read this as though " carried out " were equivalent to " begun." I cannot so read it. For something to be carried out it must of course be begun, but bearing in mind the use of the past participle it must also contemplate completion. Section 209 of the Act is not concerned with the possibility of the works being carried out from a physical or practical point of view. It is an enabling section and is concerned to remove what would otherwise be a legal obstacle (not a physical obstacle) to development. In other words, the authorisation has to be necessary in order to enable development to be carried out lawfully. If it has not yet been carried out lawfully, the purpose for which the Secretary of State is given power to " authorise " is still there as the basis for the exercise of that power. Thus far, then, I see nothing in the words of the section themselves to prevent the Secretary of State from authorising an already existing obstruction of the highway caused by development already carried out to completion. Mr. Payton, however, says that Parliament must be taken to have intended to discourage unlawful development and furthermore to deny assistance in any way to a developer who, as he put it, " has jumped the gun."

The development covered by the section is " development . . . in accordance with planning permission granted under Part III " of the Act. It is relevant therefore to see what development may be permitted under Part III. Section 32 (1) reads:

> " An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether—(*a*) the buildings or works were constructed or carried out, . . . or (*b*) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted."

A Clearly the legislature did envisage the possibility of legalising that which had already been done without permission. There is, however, no reference in section 32 to the obstruction of a highway. As the Act of 1971 envisages authorisation by the Secretary of State for development purposes and provides a comprehensive scheme (as I have already stated), it seems to me illogical that in a particular case where planning permission may be granted, namely under section 32, the Secretary of State should B have no power to authorise the stopping up. This would presumably be the case if " to be carried out " made authorisation impossible when the work had already obstructed the highway.

If the construction of section 209 is in any way ambiguous, I would resolve the ambiguity in favour of consistency in the operation of the scheme for every kind of permitted development envisaged by the Act. C Developers who act unlawfully would have to be dealt with by the penal provisions applicable to their conduct.

The matter does not stop there, however. Section 32 (2) reads:

> " Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in D subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly."

The words " and references in this Act to planning permission to develop E land or to carry out any development of land," etc., are of importance. The references are not limited to the sections contained in Part III of the Act. It is true that " applications for such permission " will be made under Part III, but there are references to " planning permission to develop land " and to " the carrying out of any development of land " elsewhere than in Part III. Section 209 refers to " development to be carried out in accordance with planning permission granted under F Part III "; that is to say, " planning permission to develop land," the expression used in section 32. Putting it another way, " planning permission granted under Part III of this Act " (the words of section 209) *is* " planning permission to develop land." Consequently, by virtue of section 32 (2), the words in section 209 must be construed to include planning permission for the retention on land of buildings or works G constructed or carried out, etc., as mentioned in subsection (1) of section 32. This makes it quite clear to my mind that Parliament cannot be said to have intended that there should be no authorisation when a highway had already been obstructed or when the development had already been carried out. In other words, it emphasises that what is being applied for is an order to enable development to be carried out lawfully. This must be so because ex hypothesi in a case to which section 32 refers, H the development has already been carried out on the ground. It is perfectly permissible, consequently, to read section 209 as saying that the Secretary of State may authorise the stopping up of any highway if he *is satisfied that it is necessary to do so in order to enable development* which has been carried out on the ground to be legalised.

I appreciate that it can be argued that the power of the Secretary of State to authorise development ex post facto should be limited to a case where planning permission has been applied for by virtue of section 32

itself. However, once one recognises that section 209 can apply to an application under section 32, the future tense as contended for by Mr. Payton cannot be upheld. An argument seeking to limit retrospective authorisation to the section 32 case can only be based on the argument that the developer who " jumps the gun " must be denied the procedure under section 209 if it is conceivably possible to do so. Such an argument really rests on an inferred intention to penalise such a person by forcing upon him the procedure provided by the Highways Act 1959. While the conditions for the exercise of the power to make an order under the Highways Act 1959 are not the same as those contained in the Town and Country Planning Act 1971, there are many cases where an order could be made under either Act.

Mr. Payton has contended for the applicants that in this present case the application falls to be deal with under section 111 of the Highways Act 1959. I do not see that any worthwhile advantage is to be obtained in this way. It is surely better for the Secretary of State who may have to consider the merits of the development permission, to consider at the same time the highway question. Moreover, it does not always follow that the developer is blameworthy. Genuine mistakes can occur. A builder might be prepared to say that he will pull the house down and start again. Why should not the Secretary of State give his authority in such a case? I regard section 209 as saying that if development is of the kind which involves obstruction of a highway, then the Secretary of State can give his authority so that the development can be carried out legally. Until his authority is given development, although carried out on the ground, has not been carried out legally. The Secretary of State is concerned to give legal status to a development of which he approves. He is not concerned to inquire how far, if at all, the work has been done.

I would dismiss this appeal.

GOFF L.J. I much regret that I am unable to accept Eveleigh L.J.'s conclusion that section 209 of the Town and Country Planning Act 1971 includes power for the Secretary of State to make a completely retrospective order, although on a more restricted construction of the section which I am prepared to adopt, I agree that this appeal should be dismissed.

I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid the possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed. It would also protect an innocent wrondoer, as in *Wood* v. *Secretary of State for the Environment* (unreported), June 27, 1975, where an order had actually been obtained before work started, but it was void for a technical irregularity and it was assumed that a further order could not be made under section 209 or 210.

However, I am driven to the conclusion that this is not possible in view of the words of futurity " to be carried out " which occur in section 209 (1), and I think this is emphasised by the sharp contrast with the expression in section 32 (1) " constructed or carried out, or a use of land instituted, before the date of the application."

Moreover, with all respect, I do not think that any anomaly is involved, in that if the work be started without planning permission, the

A developer will have to have recourse to section 32, and that contains no provision for authorising work upon the highway. The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply, whether or not planning permission was obtained before the work was done or started, and if it has not been finished the permission granted would have to be not only under section 32 to retain the work so far done, but also to authorise the rest, and that would bring in sections 209 B and 210. I do not see how the planning authority or the Secretary of State can be satisfied that an order is necessary " in order to enable development to be carried out " without ascertaining the factual situation in order to see whether there is in fact any part of the relevant permitted development left to be carried out or whether it has all been completed.

Moreover, one cannot escape this difficulty by holding that in law C there has been no development until the work is completed, because development occurs as soon as any work is done, and to say otherwise for the purposes of sections 209 and 210 would be inconsistent with the definition of development in section 22 (1), and with section 23 (1). Any work is a development, even if contrary to planning control: see section 87 (2). It cannot be any the less a development because it is unlawful for D an entirely extraneous reason, namely, that it is built upon the highway. Nor, I think, can it be said that the planning authority or the Secretary of State has to perform a paper exercise, looking only at the plan and ignoring the facts. This is possibly what the legislature ought to have said, but it has not said it. It would be necessary to do unwarranted violence to the language. One would have to read the section as if it said " to be carried out or remain," or " it is or was necessary."

E So I turn to the more limited alternative. Can it be said that if development on the highway has not been completed, then what remains to be done does show that it is necessary to make an order to enable development to be carried out, none the less so because the order will as from its date validate the unlawful exercise?

In my judgment, the answer to that question should be in the affirma- F tive, on the simple ground that what remains to be done cannot be carried out so long as what has already been done remains unlawful and liable to be removed, at all events where the new cannot physically stand alone. It would be a very narrow distinction to draw between that kind of case, for example, building an upper storey or putting on a roof, and a case where what remains to be done can stand alone but is only an adjunct, for example, a garage, of what has to be removed, the house.

G If necessary, I would say that any further building on the site of the highway, even although it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order.

Much reliance was placed by the applicants on paragraph 1 (2) (*c*) of Schedule 20 to the Town and Country Planning Act 1971, but I do not H think that that presents any unsurmountable difficulty. The words " is to be stopped up, diverted or extinguished " clearly refer only to the effect of an order, because the paragraph reads on " by virtue of the order." So it is in no way inconsistent with an order being made to give validity to what remains to be done and indirectly to what has been done in fact but unlawfully. The positioning of the notice is a little more difficult, because the ends or an end of the relevant part of the highway may already have disappeared, but the notice can still be given on the face of whatever

obstruction has been constructed. The general sense of the paragraph is perhaps against my construction, but it is only an administrative provision and certainly does not, in my view, exclude it.

Section 90 (1), which draws a distinction between carrying out and continuing, has caused me some difficulty, but this distinction is not repeated in the final provision in subsection (5) and I do not feel driven by this section from the alternative construction which I have proposed, which is beneficial and which I would adopt.

When it comes to the exercise of discretion, in my view the planning authority or the Secretary of State should disregard the fact that the highway has already been obstructed, for he ought not on the one hand to make an order he otherwise would not have made because the loss to the developer if no order be made would be out of all proportion to the loss to the public occasioned by the making of the order, for that loss the developer has brought upon himself, nor on the other hand should the planning authority or the Secretary of State, in order to punish the developer, refuse to make an order which he otherwise would have made. Punishment for the encroachment, which must in any event be invalid for the period down to the making of the order, is for the criminal law.

I should add finally that Mr. Payton for the applicants made much of the public policy of preserving amenities for ramblers; but in many cases this is not the point, because even if no order be made the developer may well, either before or after development starts, be able to obtain planning consent for revised plans and develop the site, so making the highway no longer a place for a ramble. The relevant considerations will be the desirability (if any) of keeping any substituted way off the estate roads, and the convenience of the way as a short cut, whether or not to a place where one can ramble, and if a diversion is proposed the relative convenience of the old and the new way, whether any different diversion would be better and whether in suitable cases diversion is necessary or whether the way may simply be stopped up.

For these reasons, I agree that this appeal should be dismissed.

STEPHENSON L.J. I am attracted by the construction put by Eveleigh L.J. on section 209 of the Town and Country Planning Act 1971, but I agree with Goff L.J. that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.

Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order *is* necessary in order to enable development *to be carried out* in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it *was* necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development *to have been carried out*. I cannot give what seem to me reasonably plain words that strained meaning unless it can be confidently inferred from their context or other provisions in the Act that that meaning would express Parliament's intention. And I do not find in any of the provisions of this Act to which we have been referred, including section 32, or in the provisions of the Highways Act 1959, any clear indication that what appears to be a requirement that the Secretary of State or a planning authority should be satisfied on the facts that something cannot be done in the future without a diversion order is

A intended to be a requirement that the Secretary of State or a planning authority should be satisfied on paper that something done in the past unlawfully needs to be legalised by a diversion order.

I am, however, in agreement with the view that, on the facts of this case, development was still being carried out which necessitated the authorisation of a diversion order at the time when the diversion order was authorised and confirmed. I agree with the deputy judge that on the B inspector's findings of fact it was then still necessary to enable a by no means minimal part of the permitted development to be carried out.

In my judgment, development which consists of building operations—and it may be development which consists of change of use, as to which I express no concluded opinion—is a process with a beginning and an end; once it is begun, it continues to be carried out until it is completed C or substantially completed. That fact of life may produce the deplorable result that the earlier the developer "jumps the gun" the better his chance of completing the development before the Secretary of State or the planning authority comes to consider whether it is necessary to authorise a diversion order. But it may not save the developer from unpleasant consequences and it does not enable me to attribute to the legislature an intention which it has not expressed.

D I agree that the appeal fails.

Appeal dismissed.
Secretary of State's costs to be paid by applicants.

E Solicitors: *Franks, Charlesly & Co. for Pearlman Grazin & Co. Leeds: Treasury Solicitor.*

[Reported by MISS HENRIETTA STEINBERG, Barrister-at-Law]

F

[CHANCERY DIVISION]

* WESTMINSTER CITY COUNCIL *v.* HAYMARKET PUBLISHING LTD.

[1979 W. No. 1223]

G

1979 Oct. 17, 18 Dillon J.

Rating—Unoccupied hereditament—Surcharge—Commercial building unoccupied for more than six months—Legal charge in favour of mortgagee prior in time to rating authority's charge —Whether rating authority's charge on all interests in land H *—Whether binding on purchasers from mortgagee—General Rate Act* 1967 (*c.* 9), *s.* 17*A* (*as amended by Local Government Act* 1974 (*c.* 7), *s.* 16)

On January 3, 1974, a company acquired certain commercial premises, which it charged by way of legal mortgage in favour of a bank, to secure all moneys and indebtedness present and future owing by the company to the bank. The premises remained empty and unused for a period extending beyond October 24, 1975, and a rating surcharge amounting to £16,940·93 became

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Your ref: ES/I&M/ED/1/225247
Our ref: EPGR
16 August 2022

Dear Jenny Rowlands

Stopping up proposal in Queen's Grove: 73-75 Avenue Road NW8 6JD

We act for the owners of 40 Queen's Grove, whose objection to the proposed stopping up of part of the highway is explained in detail on the attached letter addressed to LB Camden's Engineering Service Department. Please could you look into the matter, and let us have your views as to the position.

This letter is also being copied to Andrew Maughan, Head of Legal, at the Council.

Kindly acknowledge receipt.

Yours faithfully

Town Legal LLP

Enc:

c.c. andrew.maughan@camden.gov.uk

Camden

Date: 17 August 2022
Our Reference: Legal/JL
Enquiries to: Jenny Lunn

Law and Governance
London Borough of Camden
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Direct 020 7974 6007
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Patrick Robinson
Town Legal LLP
10 Throgmorton Avenue
London EC2N 2DL

By email to: patrick.robinson@townlegal.com

Dear Mr Robinson

Stopping up proposal in Queen's Grove: 73-75 Avenue Road NW8 6JD

Thank you for your letter of 8 August 2022 addressed to Elliott Della of the Council's Engineering Service and your further letter of 16 August 2022 addressed to Jenny Rowlands, Chief Executive, which have both been passed to me to respond to.

In terms of your points raised, I comment as follows:

- The cover letter is simply to enclose the draft stopping up order. The draft stopping up order itself is correct and refers to the correct plan. Notice of the proposed order has also been published in the Camden New Journal and London Gazette and displayed on site, in accordance with the relevant statutory requirements.

- The purpose of the stopping up is to allow the boundary wall adjacent to Queen's Grove to be moved 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots, in accordance with planning permission reference 2020/3796/P. This is clearly set out in the officer's delegated planning report.

- The form of design was approved under planning permission reference 2020/3796/P. This is a planning issue and was dealt with as part of the planning process.

- In Ashby v Secretary of State for the Environment [1980] 1WLR 673 it was held that a stopping up order could be confirmed if the decision making body is satisfied that it is necessary to enable completion of the development to be carried out in accordance with the planning permission (*per Stephenson and Goff L.JJ.*) or in order to enable the development that has been carried out on the ground to be authorised (*per Everleigh L.J.*).

- In this case, the building of the new wall is partially complete, with a gap left for construction traffic into the garden. The Council is satisfied that the Development has not as yet completed and the stopping up order is necessary to enable the development to be completed in accordance with planning permission.

Andrew Maughan
Borough Solicitor

Any representations received into the proposed stopping up order during the consultation process (including your letters) will of course be fully considered by the Highway Authority before any decision is made on whether the order should be made. With this in mind, the Council has also forwarded your concerns to the applicant.

As you will be aware, if any objections cannot be resolved, the Highways Authority must notify the Mayor of London of the objections. The Mayor of London may require a local inquiry to be held to fully consider the objections, unless the Mayor of London decides, in the special circumstances of the case, the holding of such an inquiry is unnecessary.

I therefore look forward to hearing from you as to whether your objections still stand.

Yours sincerely,

Jenny Lunn
Lawyer, Law and Governance

TOWN LEGAL LLP

Jenny Lunn
Law and Governance
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

10 Throgmorton Avenue
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T: 020 3893 0370
D: 020 3893 0385
E: patrick.robinson
@townlegal.com

By email: jennifer.lunn@camden.gov.uk

Your ref: Legal/JL
Our ref: EPGR
24 August 2022

Dear Ms Lunn

Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD

Thank you for your letter of 17 August 2022, in response to my earlier letters.

I enclose a photograph taken at the end of last week of the southern part of the development facing onto the pavement at Queen's Grove. It appears that there Is one small gap in the wall behind the black boarding, where the coping stones and door surround have not been finally completed. The remaining wall that can be seen in the photograph has been complete for some time. The size of the gap suggests that it is intended for pedestrian access only – and may simply be awaiting the installation of joinery.

Could you please indicate where the gap "left for construction traffic into the garden" is situated?

Could I also ask you please to look again at the Court of Appeal's 1980 Ashby v Secretary of State for the Environment case. As you point out, Eveleigh LJ expresses the view that an order authorising stopping up *can* be made retrospectively.

It is however critical to understanding the decision (which has stood unchallenged for over forty years and on the strength of which stopping up orders have been made since that time), to study the Judgments of the majority of the Court. The opening sentence of Goff LJ is instructive:

> *"I much regret that I am unable to accept Eveleigh LJ's conclusion that section 209 of the Town and Country Planning Act 1971* [now section 247 TCPA 1990] *includes power for the Secretary of State to make a completely retrospective order…"*

He continues in the next paragraph:

> *"I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid a possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed."*

He also states:

> *"However, I am driven to the conclusion that this is not possible in view of the words of futurity "to be carried out"… The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply…"*

The third Judge, Stephenson LJ begins his Judgment as follows:

> *"I am attracted by the construction put by Eveleigh LJ on section 209 of the Town and Country Planning Act 1971, but I agree with Goff LJ that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.*
>
> *Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order* is *necessary in order to enable development in his Judgment to be carried out in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it was necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development to have been carried out…"*

Since it would appear that the unfinished element of the wall can be considered to be de minimis or token only, it is difficult to see how one can escape the conclusion that an order made under section 247 is not available to legitimise the infringement on the public highway that has taken place here. On the facts of the case it would seem that development is not still being carried out – which differentiates it from the facts found by the Court in the Ashby case.

On this basis, our client maintains his objection to the proposed order.

I would be grateful for your comments in reply.

Yours sincerely

Patrick Robinson
Partner
Town Legal LLP

Encs

From:	Jennifer Lunn
To:	"Patrick Robinson"
Cc:	Elliott Della
Subject:	RE: Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD
Date:	04 October 2022 07:52:58
Attachments:	image010.png Screenshot Google Maps August 2022.PNG image001.png image003.png image004.png image005.jpg

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Dear Patrick,

Sorry for the delay in responding to your letter of 24 August.

I have attached a further screenshot taken from google maps in August 2022 that shows the gap in the wall more clearly. This gap has been left for access onto the site to enable the construction of the generator and sub-station to the rear garden in accordance with the planning permission.

Whilst the development under planning permission ref. 2020/3796/P has commenced, the Council contends that section 247 remains the appropriate power in this case.

In the Court of Appeal's 1980 Ashby v Secretary of State for the Environment case, Goff LJ put it this way;

'*Can it be said that if development on the highway has not been completed, then what remains to be done does show that it is necessary to make an order to enable development to be carried out, none the less so because the order will as from its date validate the unlawful exercise?' In my judgment, the answer to that question should be in the affirmative, on the simple ground that what remains to be done cannot be carried out so long as what has already been done remains unlawful and liable to be removed, at all events where the new cannot physically stand alone……..If necessary, I would say that any further building on the site of the highway, even although it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order."*

Stephen LJ indicated: '*I agree with the deputy judge that on the Inspector's findings of fact it was then still necessary to enable a by no means minimal part of the permitted development to be carried out*' and '*In my judgement, development which consists of building operations….is a process with a beginning and an end; once it is begun, it continues to be carried out until it is completed or substantially completed*'.

In that case, it was decided that although the highway had already been blocked, the development was still being carried out and was not yet completed. Thus, the Secretary of State had power to authorise diversion of the footpath although the diversion order would validate the unlawful development which was already carried out.

In this case, the Council is satisfied that the development is still being carried out and has not yet been substantially completed, and the stopping up order is necessary to enable the development to be completed in accordance with planning permission granted under reference 2020/3796/P.

Further, the Council considers that the purpose and need for the stopping up have been addressed in the officer's delegated report for the planning application.

However, as objections have been received, the Council must now notify the Mayor of London of the objections who will decide whether to hold an inquiry or whether in the special circumstances of the case the holding of such an inquiry is unnecessary.

Your objection will be forwarded to the Mayor as part of his consideration.

Kind regards

Jenny Lunn
Lawyer

Telephone: 020 7974 6007

From: Patrick Robinson <patrick.robinson@townlegal.com>
Sent: 30 September 2022 17:09
To: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Subject: Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD

Good afternoon, Jenny

Please may I have a reply to our letter dated 24 August (attached) ?

Thank you.

Patrick

07785 254981
www.townlegal.com

From: Benita Wignall
Sent: 24 August 2022 09:40
To: 'jennifer.lunn@camden.gov.uk' <jennifer.lunn@camden.gov.uk>
Cc: Patrick Robinson <patrick.robinson@townlegal.com>
Subject: Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD

Dear Ms Lunn

Please see attached letter for your kind attention.

Kind regards

Benita

Benita Wignall
Executive Assistant
Town Legal LLP
10 Throgmorton Avenue, London EC2N 2DL

DDI: 020 3893 0389 | Mob: 07931 870555

www.townlegal.com

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From: Patrick Robinson
To: Jennifer Lunn
Subject: Avenue road and tree
Date: 10 October 2022 22:08:42
Attachments: image002.png

[EXTERNAL EMAIL] Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Jenny

Please could you forward these photos (and this message) on to the Mayor's office as part of the submission of objections on the Queen's Grove/ Avenue Road stopping up order, and confirm when that has been done.

I reserve the right for my client, Sir Stuart Lipton, to make express further representations on the matter. There is significant disquiet over this issue, and a real concern that legal process has been totally disregarded and flouted. It should not be possible that the facts can be stretched to permit (or more accurately, for a blind eye to be turned to) a breach of the rules, as appears to have happened here.

Thanks

Patrick

Patrick Robinson

Town Legal LLP

DDI: 020 3893 0385 | Mob: 07785 254981

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tn.


Weight limit
Elsworthy Rd
5t
Except for access
Primrose Hill ¼
Regents Park ¾


QUEEN'S GROVE

Stuart

Lipton Rogers Developments LLP Registered office: 16 Great Queen Street, London, WC2B 5AH. Company registration number: OC381492. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. Dissemination of the email or its contents by any other person is prohibited. If you have received this email in error please notify the originator, delete the email from your system and destroy any copy made. Any views expressed in this message are those of the individual sender, except where the sender specifies and with authority, states them to be the views of Lipton Rogers Developments LLP. This message has been scanned for the presence of computer viruses and may be monitored for security purposes.

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From:
To: StoppingUp
Subject: 75 AVENUE ROAD
Date: 26 September 2024 17:30:51

38 Queens Grove
NW8 6HH

EMAIL . MOB NUMBER.

I live at the above address, which is immediately next to 73-75 Avenue Road at its western boundary.

I was horrified to find when the construction hoarding was removed that the new wall built along the southern boundary of 73-75 was at least a half metre forward of the old wall.

Queen's Grove is at least 180 years old and forms part of the original layout of the St John's Wood "suburb", which I believe was one of the first examples of urban planning in London. The width of the road and the distance between the buildings, both along and across the roadway, have been carefully maintained since they were first built. Therefore the new intrusion not only narrows the dimension from their original plan, but also protrudes like a sore thumb beyond the building line of Queens Grove, which has otherwise been perfectly maintained on both the north and south side of the street for some 200 metres. (Quite separately, it was very sad that the original bricks were removed and not refused given how long they had stood and how much in keeping with the age and character of the Conservation Area).

Apart from the general effect on the amenity and look and feel of the Conservation area, the new position of the wall affects me directly because it interrupts the view from my upper floor more than the old wall.

I understand that the protrusion may have been applied for because there is a tree which used to grow "through" the old wall. But if it was growing happily for many years (it's an old and large tree) through the wall, why can't the new wall be built back as

before? Even if it is felt that the new wall should go around the tree, why does that mean it should continue along the same protruding line for the other 40 metres or so of its length where there are no trees at all?

Part of the wall has not been built back in brick, is that consented?

I hope you will decide that the wall should be rebuilt in its original position, where it has stood for such a very long time.

Yours sincerely

Lady Irene Hatter

From:
To: StoppingUp
Cc: Jennifer Lunn
Subject: Re: 37 Queen"s Grove London NW8 6HN
Date: 30 September 2024 17:50:14

Thankyou for this

I live immediately across the roiad from 73-73 Avenue Road at 37 Queen's Grove, My objections to the Stopping Up will I'm sure be very similar to those of other local residents, but with added intensity because I look at the wall all day from my home offices:

1 I don't feel I was made sufficiently aware during the Planning Application consultation period that the wall was going to be permanently moved nearer to my house. We expecte dthat the hoarding would be removed after the works were completed and the wall would be reinstated in its original position

2 I'm told that the new position of the wall is "necessary" because there is a large tree which had to be built around. But the tree needs only a maximum of 1500mm of wall to be built forward to accommodate it, not the approx 40 metres that has been built. Previously the tree actually protruded through the wall, and that didn't seem to be a problem

3 I believe Queen's Grove was built in the second quarter of the 19th century and the buildings gardens and roadside remain in their original positions, with generous pavements to reflect its design as an urban suburb. As far as I can see for the entire length of Queen's Grove, so both sides of the intersecting Ordnance Hill, there have been no intrusions onto the pavements in the intervening 175 years. It seems strange to allow it now, and for such a limited reason. To remind you, the house and wall are in a Conservation Area (my house and immediate neighbours are Listed grade 2)

4 I'm sure it's too late now but the wall prior to construction was still made of its original dark-ish brown bricks. None of those have been reused. In addition the new bricks are a very strange and definitely modern colour. While that matches the new house, it seems a shame that a brick couldn't be found that is more in keeping with the rest of the old original walls in the street.

5 Is it part of your remit to look also at (1) the brown metal louvred doors that have been set into the wall, I guess to hide plant? And (2) the central section of the wall that is not rebuilt in brick but in some sort of solid material with bricks painted onto it? I guess this is to allow access to the rear of the house for large vehicles from time to time, but I'm not aware that this is a permitted point of access to the house across the pavement? It certainly looks even more out of keeping than the new brickwork sections.

6 There are also 2 new "pedestrian" doorways (in a more appropriate style) built into the wall, towards its east and west ends, which were not let into the original wall. It would be good to know that they are consented deviations from the previous layout

7 There is a limited loss of visual amenity to the occupants of my house from the forward position of the wall, but in truth it's more the effect on the look and feel of the street, as you look along it in either East or West direction that has been adversely impacted.

I will be happy to speak at the Inquiry if required, but in truth I only repeat these points, so if you are able to accept them as a written representation only, that would be fine with me

Thankyou

Nick Ritblat

37 Queen's Grove
London
NW8 6HN

From: Stuart Levy
Sent: Friday, October 11, 2024 10:19 AM
To: StoppingUp <StoppingUp@camden.gov.uk>
Subject: 75 Avenue Road

To whom it may concern,

I reside at 45 Queen's Grove and I am writing to express my concerns about the application to 'stop-up' a section of the pavement on the northern side of Queens Grove to facilitate the re-alignment of the southern boundary wall of 73-75 Avenue Road. Having lived on Queen's Grove for many years, I walk regularly along this section of Queens Grove and am most disappointed with the changes which have been permitted by Camden Council on this site. 73-75 Avenue Road used to have a beautiful old brick wall, well-aged and in fitting with the character of the area, lying as it does close to two conservation areas. Until the site hoardings were erected in late 2018/early 2019 this beautiful wall formed part of the original layout of St John's Wood, which I believe was one of the first examples of urban planning in London.

I understand that planning permission was granted for the replacement of the wall with a new brick structure however from the decision notice I was led to believe that this would be constructed of materials that resembled the existing in colour and texture. However when the hoardings were removed in 2022 it became apparent that the new structure bore no resemblance in colour or texture to the wonderful old bricks it replaced. As a minimum one would have hoped that at least some of the old bricks could be reused. It also contains a series of ugly ventilation panels which look out of character with the rest of the street. The new structure detracts from the ambiance of the rest of the street and reminds me on a daily basis of the unnecessary damage which has been done to this lovely site.

I was also dismayed to see that the applicant has breached the terms of the planning permission and the associated legal agreement by proceeding with the construction of the replacement wall on the adopted highway despite the fact that approval has not yet been given to stop-up this area. The legal agreement is clear at paragraph 4.1.3 that the development was not to be implemented until such time as the stopping up order has been made. By ignoring this requirement the owner is showing a blatant disregard for the rules in place to ensure that development in this wonderful area takes place in a sensitive and appropriate manner.

Yours Faithfully

Stuart Levy

Planning report: 2023/0183/SO

9 May 2023

Queen's Grove: part of the footway at the side of 73-75 Avenue Road

Local Planning Authority: Camden

Local Planning Authority reference: ES/I&M/ED/1/22/S247

Stopping up order Section 247 of the Town and Country Planning Act 1990 (as amended) by Schedule 22 of the Greater London Authority Act 1999.
The proposal The stopping up of part of the footway in Queen's Grove at the side of 73-75 Avenue Road.
Recommendation That Camden Council be advised that in the special circumstances of this case, the holding of an inquiry is unnecessary.

Context

1. On 3 March 2021, Camden Council ('the Council') granted planning permission (LPA ref. 2020/3796/P) for the replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and substation to rear garden and bin store to front garden (both adjoining Queen's Grove).

2. As part of the planning process, the planning merits of the development described above were assessed, and the Council concluded – after taking all the material considerations into account – that planning permission should be granted for the proposed development, subject to planning conditions and a S106 Agreement.

3. The stopping up is required in order to enable the consented development, namely to allow the boundary wall adjacent to Queen's Grove to be moved 0.5m further into the existing footway to safeguard the existing mature trees (and their roots) which are subject to a Tree Preservation Order ('TPO').

4. The Council proposes to make a stopping up order pursuant to Section 247 of the Town and Country Planning Act 1990 ('the Act') on the basis that it is satisfied that this is necessary to enable the consented development to be carried out.

5. As set out below, there are two outstanding objections to the stopping up order

and therefore ordinarily the Council is required to hold a local inquiry. However, in accordance with section 252 of the Act, the Council has notified the Mayor of the objections and seeks his decision whether, in the special circumstances of the case, the holding of an inquiry is unnecessary.

6. The Mayor of London's decision on this case will be made available on the GLA's website www.london.gov.uk

The proposed stopping up order

7. The proposed site plan, illustrating the red line boundary of the approved application (LPA ref. 2020/3796/P) is shown in Figure 1 below.

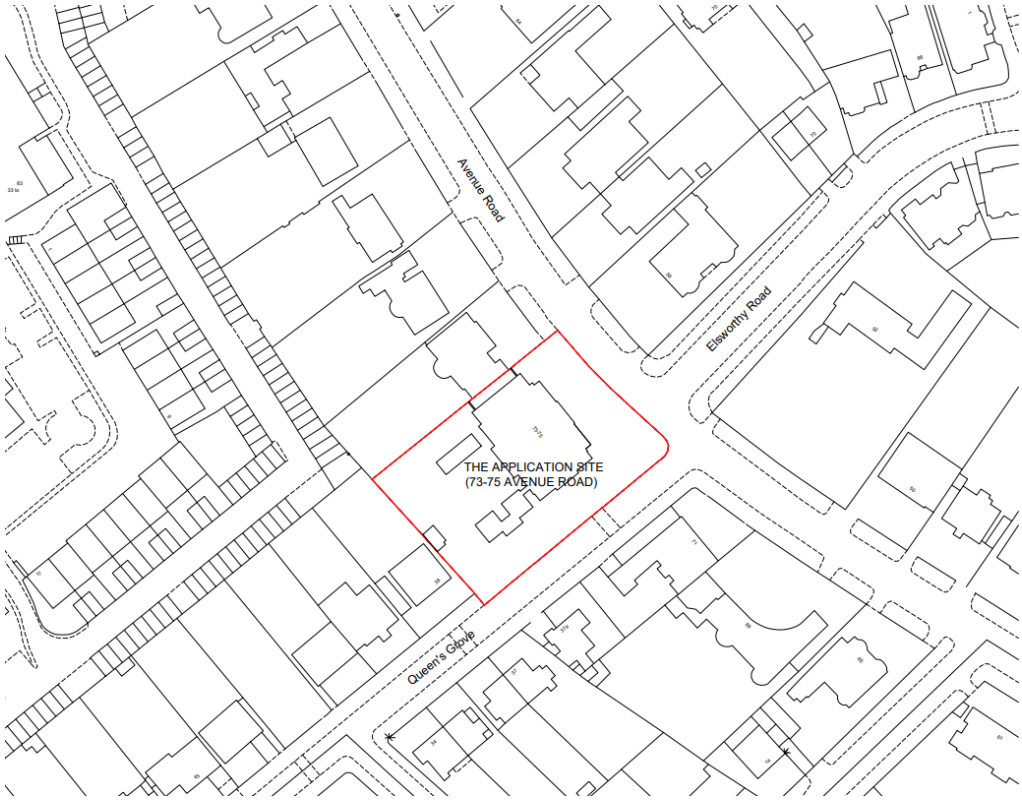


Figure 1: The approved site plan

8. The purpose of the stopping up is to allow the deviation of the boundary wall adjacent to Queen's Grove (at the side of 73-75 Avenue Road) 0.5m further into the existing public footpath in order to safeguard the existing mature trees (TPO), in accordance with planning permission ref. 2020/3796/P. The extent of the area to be stopped up is shown in Figure 2 below.

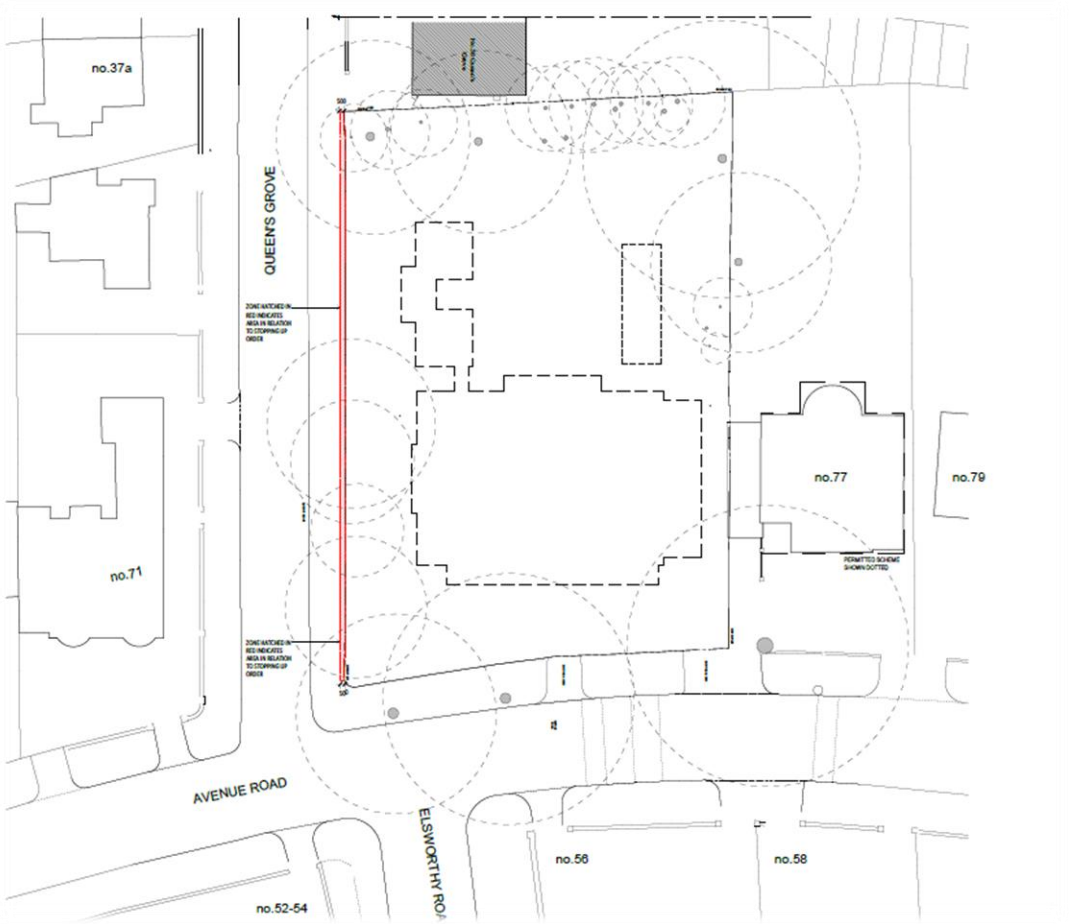


Figure 2: Area to be stopped up

Consideration of the need for a local inquiry

9. Section 252(4) (b) of the Act provides that if an objection to a proposed stopping up is received from any local authority, National Park Authority or undertaker or public gas transporter, or from any other person appearing to the relevant council to be affected by the order and that objection is not withdrawn the council must notify the Mayor and ordinarily it must cause a local inquiry to be held.

10. The only exception to the usual requirement to hold a local inquiry arises under section 252(5A) of the Act whereby, provided that none of the outstanding objections is from a local authority or undertaker or transporter, the Mayor shall decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary.

11. Between 28 July - 24 August 2022, the Council undertook a public consultation regarding the proposals as detailed at para. 7-8 of this report. Following the consultation, the Council received three objections – two from members of the public and one from Thames Water. The grounds for objection are summarised as follows:

    1. The Wall has been completed and thus not eligible to make an order under S247 of the Town and Country Planning Act 1990.

2. Objection to the narrowing of the footway
3. Thames Water requested that the order be amended to ensure their access to the plant.

12. Following the objection from Thames Water, amendments to the proposals were made, and subsequently the objection was removed.

13. On 13 March 2023, the Council notified the Mayor that two of the objections (nos. 1 and 2 above) were still outstanding

14. For the purposes of section 252 of the Act, the objectors are not a local authority, undertaker, or transporter. Accordingly, the Mayor can decide whether the holding of a local inquiry is unnecessary.

15. Advice received from the Secretary of State when he was the order-making authority is that he would only find special circumstances if satisfied that no objections remained which could benefit from being heard at an inquiry. If objections remained relating to traffic issues, the Secretary of State generally considered that these should be heard at an inquiry, although not to permit a re-run of the planning merits of the development.

16. Furthermore, guidance for Inspectors published by the Planning Inspectorate states that, when considering objections to a stopping up order, there is a need to weigh the disadvantages or loss likely to arise as a result of the stopping up, whether to members of the public generally or to persons whose properties adjoin or are near the existing footway, against the advantages to be conferred by the proposed order.

17. The first outstanding objection refers to the works to the boundary wall being completed which would deem the development not eligible for a stopping up order under S247 of the Town and Country Planning Act 1990. The Council has provided photographs showing that the works to the boundary wall have not yet been completed, and therefore it is satisfied that the S247 procedure has been employed adequately.

18. The second outstanding objection refers to the narrowing of the public footway. As detailed in the Officer Report (LPA ref. 2020/3796/P), moving the boundary wall adjacent to Queen's Grove 0.5m further into the existing public footpath is required in order to safeguard the existing mature trees (TPO) in accordance with the consented development. This has been considered during the determination of the application, and the officers concluded that given the width of the existing footpath (approximately 3.6 metres), the loss of 0.5 m would leave the footpath at a comfortable width for pedestrian use.

19. In conclusion, the planning process has already assessed the planning merits of the proposed scheme, weighing up the advantages and disadvantages of the development and concluded, taking the development plan and all material considerations into account that planning permission should be granted.

20. If the Mayor were to require an inquiry to be held on the basis of these objections, it would be revisiting the same issues that have already been

discussed at the planning application stage where it was not deemed to be of sufficient weight to warrant a refusal of the planning application.

21. It is therefore considered that the concerns raised by the objectors to the stopping up of footway proposed have previously been considered and addressed as part of the planning process.

Financial considerations

22. There are no financial considerations at this stage.

Conclusion

23. The planning process assessed the planning merits of the development (including the proposed stopping up of footway) and concluded, taking the development plan and all material considerations into account, that planning permission should be granted. The stopping up of the land is necessary to enable the development to be carried out and is therefore in accordance with the requirements under section 247 of the Act.

24. Therefore, if an inquiry is heard it would be revisiting issues which have already been considered at the planning application stage (i.e. the planning merits of the proposals, the related need to stop up the public footway in relation to the preservation of the TPO trees). Accordingly, in the special circumstances of this case, the holding of an inquiry is not necessary.

For further information, contact GLA Planning Unit (Development Management Team):
Carmen Campeanu, Strategic Planner (case officer)
email: carmen.campeanu@london.gov.uk
Graham Clements, Team Leader – Development Management
email: graham.clements@london.gov.uk
Allison Flight, Deputy Head of Development Management
email: alison.flight@london.gov.uk
John Finlayson, Head of Development Management
email: john.finlayson@london.gov.uk
Lucinda Turner, Assistant Director of Planning
email: lucinda.turner@london.gov.uk

Planning report: 2023/0183/SO

3 August 2023

Queen’s Grove: part of the footway at the side of 73-75 Avenue Road

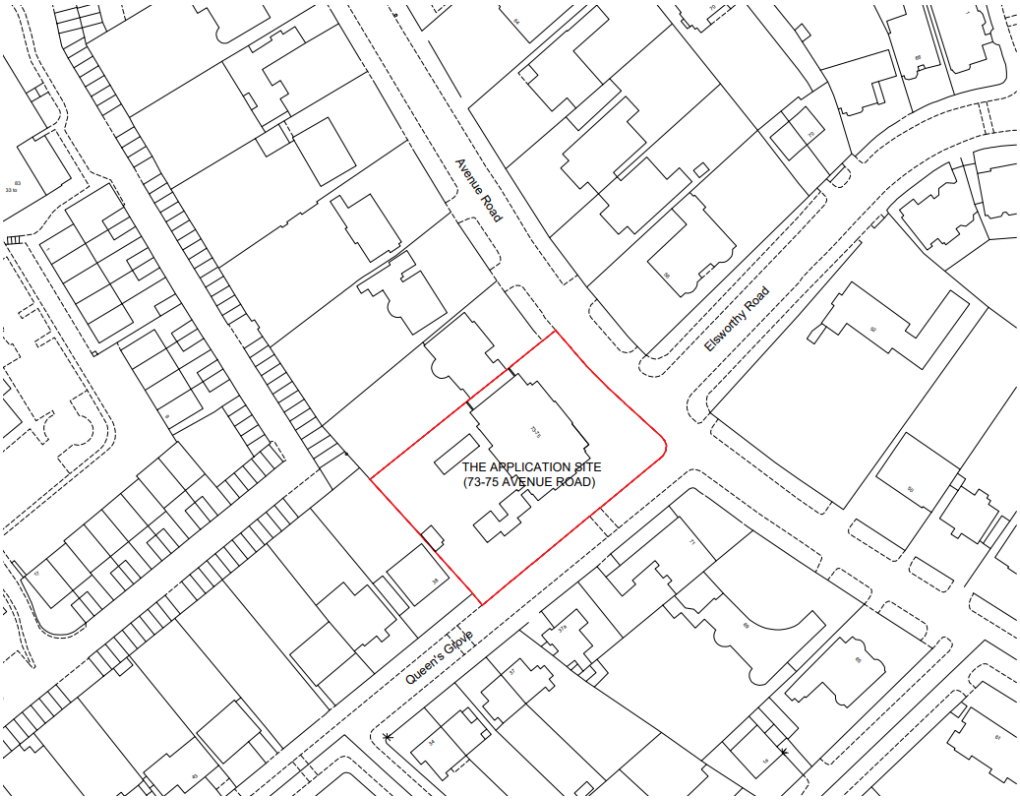
Local Planning Authority: Camden

Local Planning Authority reference: ES/I&M/ED/1/22/S247

Stopping up order Section 247 of the Town and Country Planning Act 1990 (as amended) by Schedule 22 of the Greater London Authority Act 1999.
The proposal The stopping up of part of the footway in Queen’s Grove at the side of 73-75 Avenue Road.
Recommendation That the Deputy Mayor’s decision of 9 May 2023 be set aside in light of the further information notified to the GLA on 8 June 2023 and that Camden Council be notified that there are no special circumstances to dispense with the holding of an inquiry.

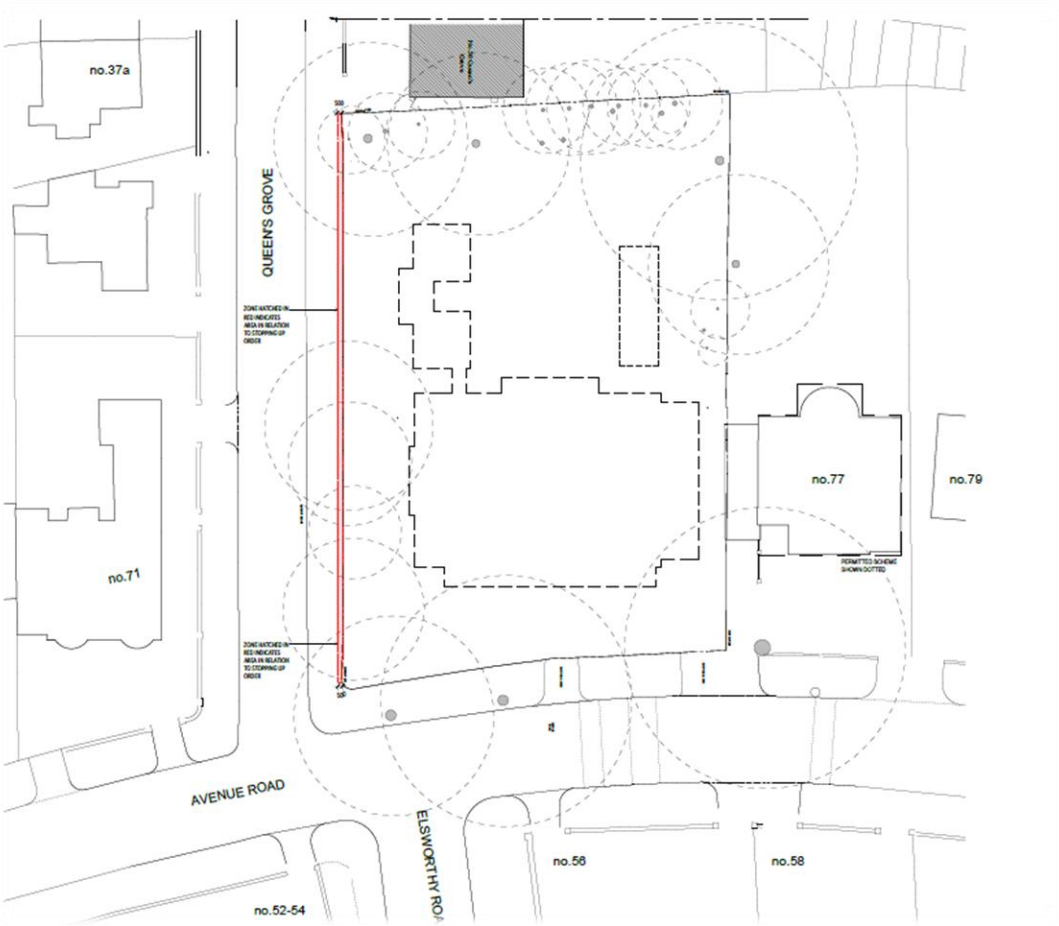
Context

1. On 3 March 2021, the Council granted planning permission (LPA ref. 2020/3796/P) for the replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and substation to rear garden and bin store to front garden (both adjoining Queen's Grove). The proposed site plan, illustrating the red line boundary of the approved application (LPA ref. 2020/3796/P) is shown in Figure 1 below.



2. As part of the planning process, the planning merits of the development described above were assessed and the Council concluded – after taking all the material considerations into account – that planning permission should be granted for the proposed development, subject to planning conditions and a Section 106 Agreement.

3. A stopping up was deemed necessary by the Council to enable this consented development to be carried out in accordance with planning permission ref. 2020/3796/P and to allow the boundary wall adjacent to Queen's Grove (at the side of 73-75 Avenue Road) to be moved 0.5m further into the existing footway to safeguard the existing mature trees (and their roots) which are subject to a Tree Preservation Order ('TPO') pursuant to Section 247 of the Town and Country Planning Act 1990 ('the Act'). The extent of the area to be stopped up is shown in Figure 2 below.



4. On 13 March 2023, Camden Council notified the GLA that there were two outstanding objections to the stopping up order made by members of the public. The grounds for objection were summarised as follows:

    1. Objection to the narrowing of the footway.
    2. Objection that the wall had already been completed and as such section 247 of the Act was not the appropriate legal power to use to Stop Up the land.

5. Section 252(4)(b) of the Act provides that if an objection to a proposed stopping up is received from any local authority, National Park Authority or undertaker or public gas transporter, or from any other person appearing to the relevant Council to be affected by the order and that objection is not withdrawn the Council must notify the Mayor of those objections and ordinarily it must cause a local inquiry to be held.

6. The only exception to this is set out within section 252 (5A) of the Act which allows the Mayor once he has been notified of the objections and as long as none of those objections are made by a local authority, undertaker or transporter to decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary. If he decides that it is unnecessary,

he must notify the Council of this decision who may then dispense with the inquiry although not required to do so.

7. While the Deputy Mayor considered a report on whether there were special circumstances under section 252 (5A) of the Act to dispense with the holding of an inquiry on 9 May 2023 in which he decided there were special circumstances, on 8 June 2023 Camden Council notified the Mayor that it had come to their attention that they had inadvertently missed from their letter of 13 March 2023 some further objection correspondence. These included an additional objection letter (dated 24 August 2022), photos sent by Town Legal LLP and their subsequent response (dated 4 October 2022) relating to the objection regarding the use of section 247 of the Act to Stop Up the land and whether the works had actually already been substantially completed.

8. As the Council is required under section 252 of the Act to notify the Mayor of the objections before the Mayor can consider the question of whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary and given they failed to notify the Mayor of all the objections received, the Deputy Mayor's decision of 9 May 2023 can therefore be set aside. This report therefore reconsiders whether, in light of all the information notified to the Mayor, special circumstances exist under section 252 (5A) of the Act.

9. The Council have confirmed to the GLA that they have not yet made the Stopping Up Order. They have also confirmed that they do not consider that the further information notified to the GLA raises any new points not already considered by the Mayor in the report of 9 May 2023.

10. The Mayor of London's decision on this case will be made available on the GLA's website www.london.gov.uk

Consideration of the case for special circumstances

11. Advice received from the Secretary of State when he was the order-making authority is that he would only find special circumstances if satisfied that no objections remained which could benefit from being heard at an inquiry. If objections remained relating to traffic issues, the Secretary of State generally considered that these should be heard at an inquiry, although not to permit a re-run of the planning merits of the development.

12. Furthermore, guidance for Inspectors published by the Planning Inspectorate states that, when considering objections to a stopping up order, there is a need to weigh the disadvantages or loss likely to arise as a result of the stopping up, whether to members of the public generally or to persons whose properties adjoin or are near the existing footway, against the advantages to be conferred by the proposed order and these matters are most appropriately assessed by Inspectors as part of the usual inquiry process.

13. The report considered by the Deputy Mayor on 9 May 2023 considered carefully the two objections sent to the Mayor on 13 March 2023. In relation to the

objection relating to narrowing the public footpath by 0.5m by moving the boundary wall adjacent to Queen's Grove in order to safeguard the existing mature trees (TPO), GLA officers concluded that as the planning process has already assessed the planning merits of the proposed scheme including the narrowing of the footpath and given that even after this reduction there would still be a width comfortable for pedestrian use, there would be no benefit in rerunning the planning merits of this objection at an inquiry. The further information provided by the Council on 8 June 2023 does not alter GLA officers' assessment of this objection.

14. The other outstanding objection notified to the Mayor on 13 March 2023 queried whether section 247 of the Act was the appropriate power to stop up the land. At this time the Council had responded by providing photographs showing clearly that these works have not yet been completed and that they were therefore satisfied that the correct legal power was being used. Having considered the Council's representations and other material information before him within the report of 9 May 2023, the Deputy Mayor was satisfied at that time that there were special circumstances under section 252 (5A).

15. The further documentation provided by the Council on 8 June 2023, however, shows further photos of completed works to the boundary wall provided by the objector, disputing the Council's photographs accompanied by a letter from Town Legal LLP raising questions about whether these works have already been substantially implemented such that section 247 of the Act would not be the appropriate power to use to stop up the land. This information raises uncertainty about whether the works have been substantially completed. When considering the question of whether there are special circumstances under section 252 (5A) of the Act, the Mayor is not required to make a judgement on whether the works have been substantially completed or whether the correct powers are being used by the Council to stop up the land and no such judgements should be inferred by this decision. However, GLA officers conclude, following legal advice, that whilst GLA officers acknowledge that the Council have reiterated their position on 13 June 2023 that the works to the boundary wall have not yet been completed, this further objection information provided to the Mayor raises some questions and a technical legal point that would benefit from some further consideration by the Council and have not previously been considered by the planning process. There are therefore no special circumstances to notify Camden Council that the holding of such an inquiry is unnecessary.

Financial considerations

16. There are no financial considerations at this stage.

Conclusion

17. Further to the decision of the Deputy Mayor on 9 May 2023 and following the consideration of all the information notified to the Mayor by Camden Council, GLA officers conclude that an objection remains that raises a technical legal point, not assessed at the planning stage and accordingly it is recommended that:

- the decision on 9 May 2023 is set aside as there was a failure by Camden Council to notify the Mayor of all the objections received; and

- Camden Council is notified that there are no special circumstances to notify them that they may dispense with the holding of an inquiry under section 252 (5A) of the Act.

For further information, contact GLA Planning Unit (Development Management Team):
Carmen Campeanu, Strategic Planner (case officer)
email: carmen.campeanu@london.gov.uk
Connaire OSullivan, Team Leader – Development Management
email: Conanire.OSullivan@london.gov.uk
Allison Flight, Deputy Head of Development Management
email: alison.flight@london.gov.uk
John Finlayson, Head of Development Management
email: john.finlayson@london.gov.uk
Lucinda Turner, Assistant Director of Planning
email: lucinda.turner@london.gov.uk

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Hi Jenny

Thank you, we've received your email with the other documents.

Regards

Gill Lawton
Technical Support Co-ordinator, Planning
Good Growth
GREATER**LONDON**AUTHORITY
07548 117467
gill.lawton@london.gov.uk

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From: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Sent: 08 June 2023 18:21
To: Planning Support <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>; Carmen Campeanu <Carmen.Campeanu@london.gov.uk>
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

Hi Gill,

Thanks very much for getting back to me. Here's the additional objection letter and emails, as below:

- &#0;. Additional letter of objection from Town Legal LLP dated 24 August 2023
- &#0;. Email in response from Camden Legal dated 4 October 2023
- &#0;. Email from Town Legal LLP dated 10 October 2023 attaching photos

Hopefully these should come through ok but can you please confirm?

Many thanks

Jenny Lunn
Lawyer

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We definitely have a copy of the Council's letter on 13 March 2023, but I don't think we have a copy of the other documents, so could you send these again, please?

Regards

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Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

Dear sirs,

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Many thanks

Jenny Lunn
Lawyer

Telephone: 020 7974 6007

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Sent: 17 May 2023 12:19
To: 'planningsupport@london.gov.uk' <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>
Subject: FW: Report for 2023/0183 75 Avenue Road Stopping Up Order

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Unfortunately, it has come to our attention that the Council inadvertently missed from its letter of 13 March 2023 an additional objection letter and photos sent from Town Legal LLP and response from the Council.

We do not consider that the additional letter from Town Legal LLP raises any new points, and refer in particular to the photos provided by the Council at appendix 6 of its letter of 13 March. However, we consider that we should bring this to your attention.

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We are very sorry for the inconvenience this will cause, but we would be grateful if you can please confirm whether the GLA's decision letter and report still stand in light of this further information.

Kind regards

Jenny Lunn
Lawyer

Telephone: 020 7974 6007

From: Greater London Authority <planningsupport@london.gov.uk>
Sent: 10 May 2023 08:46
To: Elliott Della <Elliott.Della@camden.gov.uk>
Subject: Report for 2023/0183 75 Avenue Road Stopping Up Order

Dear All

Please find attached the decision letter and report relating to 2023/0183, 75 Avenue Road Stopping Up Order in Camden.

Regards

Zuzana Jancova

Planning Support

Greater London Authority

planningsupport@london.gov.uk

]]>

[ref:a0i4J00000CGPjOQAX:ref]

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From: Jennifer Lunn
To: "Carmen Campeanu"; Planning Support
Cc: Elliott Della; Planning Support
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order
Date: 13 June 2023 15:28:07
Attachments: image001.png
image002.png
image003.png
image004.jpg
image005.png
image006.png
image007.png
image008.jpg
image009.png
image010.png
image011.png
image012.jpg
image013.jpg
image014.jpg

Hi Carmen,

I confirm that the Council is satisfied that the works to the boundary wall have not yet been completed, and the S247 procedure has therefore been employed adequately.

(We checked on site today, and there remains a 3 metre gap in the boundary wall which has temporary hoarding, the same as shown in the photos attached at appendix 6 of our letter of 13 March).

Many thanks

Jenniy Lunn
Lawyer

Telephone: 020 7974 6007

From: Carmen Campeanu <Carmen.Campeanu@london.gov.uk>
Sent: 12 June 2023 11:46
To: Jennifer Lunn <jennifer.lunn@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

Hi Jennifer,

Thank you for your email. I have received the additional information as listed in your email dated

8th June 2023.
I'll go through the documents and come back to you shortly.

Just so that I am clear, can the Council confirm that the works to the boundary wall have not yet been completed, and therefore it is satisfied that the S247 procedure has been employed adequately?

Many thanks,

Carmen

Carmen Campeanu MRTPI

Strategic Planner – Development Management
GREATER**LONDON**AUTHORITY
169 Union Street, London SE1 0LL
carmen.campeanu@london.gov.uk
07597 561961

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From: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Sent: 09 June 2023 10:04
To: Planning Support <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>; Carmen Campeanu <Carmen.Campeanu@london.gov.uk>
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

Great, thank you.

Jenny Lunn
Lawyer

Telephone: 020 7974 6007

From: Planning Support <planningsupport@london.gov.uk>
Sent: 09 June 2023 09:51
To: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>; Carmen Campeanu <Carmen.Campeanu@london.gov.uk>
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Planning Support

Greater London Authority

planningsupport@london.gov.uk

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[ref:a0i4J00000CGPjOQAX:ref]

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Town and Country Planning Act 1990 c. 8
s. 247 Highways affected by development: orders by Secretary of State.

Law In Force With Amendments Pending

Version 5 of 6

12 February 2015 - Present

Subjects
Road traffic

Keywords
Development; Diversion of highways; Highway authorities; Highway improvement; Ministers' powers and duties; Stopping up orders

247.— Highways affected by development: orders by Secretary of State.

(1) The Secretary of State may by order authorise the stopping up or diversion of any highway [outside Greater London] [1] if he is satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III[or section 293A] [2] , or

(b) by a government department.

(2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway [outside Greater London] [3] .

[

(2A) The council of a London borough may by order authorise the stopping up or diversion of any highway within the borough, or within another London borough if the council of that borough consents, if it is satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III[or section 293A] [2] , or

(b) by a government department.

(2B) Such an order may make such provision as appears to the council to be necessary or expedient for the provision or improvement of any other highway within the borough.

] [4]

(3) [An order under subsection (1) or (2A)] [5] may direct—

(a) that any highway provided or improved by virtue of it shall for the purposes of the Highways Act 1980 be a highway maintainable at the public expense;

(b) that the Secretary of State, [a strategic highways company,] [6] or any county council, [county borough council,] [7] metropolitan district council or London borough council specified in the order or, if it is so specified, the Common Council of the City of London, shall be the highway authority for that highway;

(c) in the case of a highway for which the Secretary of State [or a strategic highways company][8] is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Highways Act 1980.

[

(3A) An order under subsection (2A) may not provide that—

(a) the Secretary of State,

[

(aa) a strategic highways company,

][10]

(b) Transport for London, or

(c) a London borough other than the one whose council is making the order,

shall be the highway authority for a highway unless the Secretary of State, [the strategic highways company,][11] Transport for London or the council, as the case may be, so consents.

][9]

(4) An order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State [or the council of the London borough][12] to be necessary or expedient, including in particular—

(a) provision for authorising the Secretary of State [or the council of the London borough][12] , or requiring any other authority or person specified in the order—

(i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work; or

(ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section 1 or 2 of the Restriction of Ribbon Development Act 1935 in relation to any highway stopped up or diverted under the order;

(b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to which the order relates.

(5) An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment.

(6) The provisions of this section shall have effect without prejudice to—

(a) any power conferred on the Secretary of State [or a London borough][13] by any other enactment to authorise the stopping up or diversion of a highway;

(b) the provisions of Part VI of the Acquisition of Land Act 1981; or

(c) the provisions of section 251(1).

Notes

1 Words added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(2) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)
2 Words inserted by Planning and Compulsory Purchase Act 2004 (Commencement No. 9 and Consequential Provisions) Order 2006/1281 art.5(b) (June 7, 2006)
3 Words added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(3) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)
4 Added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(4) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)
5 Words substituted by Greater London Authority Act 1999 c. 29 Sch.22 para.3(5) (July 3, 2000: substitution has effect subject to transitional provision specified in SI 2000/1547 art.2)
6 Words inserted by Infrastructure Act 2015 c. 7 Sch.1(2) para.104(2)(a) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
7 Words inserted by Local Government (Wales) Act 1994 c. 19 Sch.6(II) para.24(9) (April 1, 1996)
8 Words inserted by Infrastructure Act 2015 c. 7 Sch.1(2) para.104(2)(b) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
9 Added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(6) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)
10 Added by Infrastructure Act 2015 c. 7 Sch.1(2) para.104(3)(a) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
11 Words inserted by Infrastructure Act 2015 c. 7 Sch.1(2) para.104(3)(b) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
12 Words added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(7) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)
13 Words added by Greater London Authority Act 1999 c. 29 Sch.22 para.3(8) (July 3, 2000: insertion has effect subject to transitional provision specified in SI 2000/1547 art.2)

time and place for hearing the application. In *In re Marendez* the registrar refused to fix the time and place for hearing. The debtor appealed against that. The appeal was not heard until after the receiving order. At the time the receiving order was made therefore, the application to set aside the bankruptcy notice had never been heard at all. The refusal to fix a hearing was effected merely by the registrar indorsing the affidavit "No cause shown," or some similar words, and without a hearing. Rule 179 prohibits the making of a receiving order until the application to set aside the bankruptcy notice has been heard. As I have said, when the receiving order was made in *In re Marendez*, the application had not been heard, the registrar having refused to fix a date and time for hearing. Thus the issue in *In re Marendez* was whether the application could be said to have been heard prior to the determination of the appeal by the Divisional Court. That being said, and although we have only a very brief note of the judgment in *In re Marendez*, I think it is very probable that my observations were on any view too widely expressed, having regard in particular to *In re A Debtor (No. 10 of 1953), Ex parte the Debtor* v. *Ampthill Rural District Council* [1953] 1 W.L.R. 1050 which was not cited to the court in *In re Marendez*. I agree with Browne-Wilkinson J. that the latter case, *In re A Debtor (No. 10 of 1953)*, is directly in point in the present case and covers the present point.

In the circumstances, I agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors: *Adlers and Aberstones.*

[Reported by MISS HILARY PEARSON, Barrister-at-Law]

[COURT OF APPEAL]

* ASHBY AND ANOTHER *v.* SECRETARY OF STATE FOR THE ENVIRONMENT AND ANOTHER

1979 Oct. 31; Nov. 1; Dec. 11 — Stephenson, Goff and Eveleigh L.JJ.

Highway — Public path — Diversion order — Housing development obstructing footpath begun before diversion order published— Whether Secretary of State empowered to confirm order—Town and Country Planning Act 1971 (*c.* 78), *ss.* 209 (1), 210 (1)

In 1962 outline planning permission was granted to a developer for a housing development of 40 houses on a plot through which a public footpath ran. When detailed approval was sought, consideration was given to diverting the footpath. Permission was given to the developer and work commenced in 1976. A diversion order was made in respect of the footpath under sections 209 (1) and 210 (1) of the Town and Country Planning Act 1971. That was confirmed by the Secretary of State after a public inquiry in 1977. The applicants applied to

the Queen's Bench Division for an order quashing the Secretary of State's decision on the ground that some of the houses were nearly complete and it was not within his powers under section 209 (1) to validate development that had begun. After finding that some permitted development remained to be completed, the deputy judge refused to quash the decision, holding that the diversion order was necessary to enable the remaining work to be completed and that the Secretary of State could confirm the diversion of a footpath under section 209 (1) if he were satisfied that it was necessary to enable the development to be carried out in accordance with planning permission.

On appeal by the applicants:—

Held, dismissing the appeal, that the confirmation of the diversion order was valid as (*per* Eveleigh L.J.) on the true construction of section 209 (1) of the Town and Country Planning Act 1971 the Secretary of State might confirm the order stopping up or diverting the footpath if he were satisfied that it was necessary in order to enable development which had been carried out on the ground to be legalised (post, pp. 678 D–F, 679H) or (*per* Stephenson and Goff L.JJ.) the development on the footpath not having been completed, what remained to be done showed that it was necessary for the purposes of section 209 (1) to make an order to enable the development to be carried out (post, pp. 681E–G, 683A–B).

Decision of Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division affirmed.

The following case is referred to in the judgment of Goff L.J.:

Wood v. *Secretary of State for the Environment* (unreported), June 27, 1975.

The following additional cases were cited in argument:

Jones v. *Bates* [1938] 2 All E.R. 237, C.A.

Lucas (F.) & Sons Ltd. v. *Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491.

Reg. v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891; [1975] 3 W.L.R. 172; [1975] 3 All E.R. 243, C.A.

Thomas David (Porthcawl) Ltd. v. *Penybont Rural District Council* [1972] 1 W.L.R. 1526; [1972] 3 All E.R. 1092, C.A.

APPEAL from Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division.

The applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, by a notice of motion dated March 9, 1978, sought an order to quash and set aside the order of the Secretary of State for the Environment dated November 2, 1977, whereby he confirmed the order of the planning authority, the Kirklees Metropolitan District Council, made under section 210 of the Town and Country Planning Act 1971, known as the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. The grounds of the application were: (1) that the Secretary of State's decision was not within his powers under the Act of 1971; (2) that, the footpath being obstructed so as to be impassable, the Secretary of State and the planning authority could not be satisfied that it was necessary to divert the footpath in order to enable development to be carried out in accordance with planning permission under Part III of the Act; (3) that the Secretary of State and the planning authority were wrong in holding that they could be so satisfied if any development remained to be completed; (4) that they should have held that, once development had taken place to an extent that it

A obstructed the footpath, then they could not be so satisfied; (5) that, alternatively, the Secretary of State wrongly held that the permitted development had not been completed by reason of the internal works to some of the houses and the layout of land in curtilages; and (6) that there was no evidence on which the Secretary of State could reasonably conclude that the layout of the land in curtilages formed any part of the permitted development which remained to be completed.

B The deputy judge dismissed the application on July 13, 1978, holding, inter alia, that the Secretary of State could authorise the diversion of a footpath under section 209 (1) of the Act if he was satisfied that it was necessary to enable development to be carried out lawfully in accordance with planning permission and that the order had been properly confirmed by the Secretary of State. The applicants appealed against the deputy C judge's decision on the grounds that (1) on a proper construction of section 209 (1) of the Act of 1971, the power to authorise the diversion of a public footpath was to facilitate the proposed development and that the powers created under sections 209 and 210 of the Act could not be exercised so as to validate development already carried out; (2) the deputy judge was wrong in holding that he was entitled to consider another part of the development, not directly affected by the footpath, in deciding D whether the development had been carried out; and (3) the proper procedure should have been an application under section 111 of the Highways Act 1959, in which case objectors would have been entitled to invite the Secretary of State to consider other criteria; whereas the procedure adopted effectively encouraged developers to carry out unlawful development, thereby prejudicing the objectors' rights and the consider-E ation of the merits of their objections.

The facts are stated in the judgment of Eveleigh L.J.

Barry Payton for the applicants.
Jeremy Sullivan for the Secretary of State.
The planning authority was not represented.

F

Cur. adv. vult.

December 11. The following judgments were read.

STEPHENSON L.J. I will read first the judgment of Eveleigh L.J. who G is not able to be here this morning.

EVELEIGH L.J. This is an appeal against the refusal of the deputy judge to quash a decision by the Secretary of State concerning a footpath diversion order made by the Kirklees Metropolitan District Council, the planning authority under section 210 of the Town and Country Planning Act 1971.

H In 1962 outline planning permission was granted for housing development on an area of land through which ran a public footpath. Approval of the details of residential development for 40 houses was given on September 5, 1975, to a Mr. Woodhead, a builder. The proposed development involved obstruction of the footpath at a number of points and so the question of diversion arose. On September 4, 1975, the advisory panel on footpaths of the planning accepted a proposed route for the diversion. In January 1976 the builder laid out an alternative

footpath and started work on a house, No. 25, which obstructed the footpath before the planning authority had published a diversion order and of course before any application was made to the Secretary of State. For that he was fined £80 and ordered to pay £100 costs.

On March 15, 1976, the planning authority made a diversion order in respect of a new route. After objections had been received and a public meeting had rejected this diversion, the planning authority devised another route for the footpath which became the subject of the Kirklees (Broad Lane Estate, Upperthong) Public Path Diversion Order 1976. After a local inquiry, the Secretary of State confirmed the order. It is this decision which is the subject of the present appeal.

Section 210 (1) of the Town and Country Planning Act 1971 reads:

> "Subject to section 217 of this Act, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 209 (1) of this Act."

Section 217 (1) reads:

> "An order made under section 210 . . . of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it."

As the order made under section 210 was opposed, confirmation by the Secretary of State was required. Section 217 (2) reads:

> "The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 210 . . . to be satisfied."

Thus, the planning authority and the Secretary of State have to be satisfied of the matters referred to in section 209. Section 209 (1) reads:

> "The Secretary of State may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, or to be carried out by a government department."

It is on the interpretation of this subsection that this appeal depends. For the applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, emphasis is placed upon the words "to be carried out." It is said that these words relate to the future and cannot apply where development has begun or, alternatively and a fortiori, where development has been completed. It is argued that there is no power to ratify past activities which would only encourage developers to "jump the gun." The whole of Part X of the Act in which the relevant sections are contained and provisions in Schedule 20 and section 215 of the Act for objectors to be heard and inquiries to be held indicate that the purpose of those provisions is to prevent premature unlawful development where a highway will be obstructed. In the present case, therefore, the order and the Secretary of State's decision were invalid and the developer's only course is to apply under section 111 of the Highways Act 1959 for an order for the diversion of the highway.

The Secretary of State (the planning authority does not appear) claims that section 209 of the Act of 1971 on its proper construction does give

A power to the Secretary of State to act although development has been completed and although the highway has already been obstructed. Alternatively, it is claimed that all of the permitted development had not been completed, that development in accordance with planning permission remained to be done and that, consequently, there was a situation where the Secretary of State's decision could enable development to be carried out in the future.

B The alternative submission makes it necessary to see what work had actually been done. Work on house, No. 25, was begun in January 1976 and part of the house went over the footpath. Two houses, Nos. 20 and 21, were about 18 feet apart and one was on the east of the footpath and the other on the west. The tarmac drives to the garages of these houses were linked or merged and between them covered the line of the footpath C over the distance from the pavement to the garages. The footpath crossed the gardens of these houses and also the plots of two further houses, Nos. 34 and 36, which were to the north of Nos. 20 and 21. Although the public could still walk along the footpath line, save that No. 25 encroached over it, the path would be totally isolated from public use when the various plots were fenced.

The house numbered 25, appeared to have been completed externally D but inside it had not been decorated. A floorboard 14 feet long was missing and some cupboards had not been completely installed in the kitchen. The houses numbered 20 and 21 also appear to have been completed from the outside but inside neither had been decorated. Radiators and sanitary fittings had not been installed in house, No. 21, and floorboards had not been nailed down in the larder of house, No. 20.

E In his report to the Secretary of State the inspector remarked that the footpath had not yet been legally diverted and said:

> "For this reason Mr. Woodhead [the builder] is unable to sell the three plots and houses and to complete the development so far as he is concerned and so to enable the buildings to be occupied as dwelling-houses. So long as the public has a right to walk through these plots F people are not likely to buy the houses. The development permitted on plan C, away from the line of the path, is also incomplete and cannot be completed until the alternative route is known along which the path will be diverted."

He went on to say that he considered that it would be unfair to the developer to require him to pull down house, No. 25, (and possibly another G house).

An application to stop up or divert a highway may be made with the Secretary of State's consent to a magistrates' court under sections 110 and 111 of the Highways Act 1959.

Part X of the Town and Country Planning Act 1971 contains provisions for stopping up and diverting highways and provisions for safeguarding the public interest before a final order is made. The H considerations governing the making of an order are not precisely the same as those under the Highways Act 1959, although in some situations the order might well be obtainable under the procedure of either Act. The effect of Part X of the Town and Country Planning Act 1971 is to provide a comprehensive scheme in that Act for the development of land and the consequential interference with highways under the supervision of the Secretary of State. It is tidy and logical and ensures a consistent approach in deciding the merits of conflicting interests.

I turn now to consider the construction of section 209. The Secretary of State is empowered to " authorise the stopping up or diversion of any highway." Stopping up or diversion may refer to the past or the future. The words are as applicable to a highway which has already been diverted as to one which it is intended to divert. I cannot accept the argument that the word " authorise " is inappropriate to something already done. The first meaning in the *Shorter Oxford Dictionary* 3rd ed. (1944) vol. 1, p. 125, for the verb " to authorise " is given as " To set up or acknowledge as authoritative. To give legal force to; to sanction, countenance." Where " authorise " embodies the idea of future conduct, it is defined in the second meaning in that dictionary. I read section 209 as saying that the Secretary of State may acknowledge as authoritative or give legal force to or sanction the stopping up and, consequently, he may deal with a highway that has been stopped up or one that will be stopped up. Indeed, the above meaning of the word is borne out by section 209 (4), which provides:

> " An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment."

The Secretary of State has to be " satisfied that it is necessary to do so." This means that it is necessary to authorise the stopping up or the diversion. We then come to the words so strongly relied on by the applicants " in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act," etc. Mr. Payton for the applicants would have us read this as though " carried out " were equivalent to " begun." I cannot so read it. For something to be carried out it must of course be begun, but bearing in mind the use of the past participle it must also contemplate completion. Section 209 of the Act is not concerned with the possibility of the works being carried out from a physical or practical point of view. It is an enabling section and is concerned to remove what would otherwise be a legal obstacle (not a physical obstacle) to development. In other words, the authorisation has to be necessary in order to enable development to be carried out lawfully. If it has not yet been carried out lawfully, the purpose for which the Secretary of State is given power to " authorise " is still there as the basis for the exercise of that power. Thus far, then, I see nothing in the words of the section themselves to prevent the Secretary of State from authorising an already existing obstruction of the highway caused by development already carried out to completion. Mr. Payton, however, says that Parliament must be taken to have intended to discourage unlawful development and furthermore to deny assistance in any way to a developer who, as he put it, " has jumped the gun."

The development covered by the section is " development . . . in accordance with planning permission granted under Part III " of the Act. It is relevant therefore to see what development may be permitted under Part III. Section 32 (1) reads:

> " An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether—(*a*) the buildings or works were constructed or carried out, . . . or (*b*) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted."

Clearly the legislature did envisage the possibility of legalising that which had already been done without permission. There is, however, no reference in section 32 to the obstruction of a highway. As the Act of 1971 envisages authorisation by the Secretary of State for development purposes and provides a comprehensive scheme (as I have already stated), it seems to me illogical that in a particular case where planning permission may be granted, namely under section 32, the Secretary of State should have no power to authorise the stopping up. This would presumably be the case if " to be carried out " made authorisation impossible when the work had already obstructed the highway.

If the construction of section 209 is in any way ambiguous, I would resolve the ambiguity in favour of consistency in the operation of the scheme for every kind of permitted development envisaged by the Act. Developers who act unlawfully would have to be dealt with by the penal provisions applicable to their conduct.

The matter does not stop there, however. Section 32 (2) reads:

> " Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly."

The words " and references in this Act to planning permission to develop land or to carry out any development of land," etc., are of importance. The references are not limited to the sections contained in Part III of the Act. It is true that " applications for such permission " will be made under Part III, but there are references to " planning permission to develop land " and to " the carrying out of any development of land " elsewhere than in Part III. Section 209 refers to " development to be carried out in accordance with planning permission granted under Part III "; that is to say, " planning permission to develop land," the expression used in section 32. Putting it another way, " planning permission granted under Part III of this Act " (the words of section 209) *is* " planning permission to develop land." Consequently, by virtue of section 32 (2), the words in section 209 must be construed to include planning permission for the retention on land of buildings or works constructed or carried out, etc., as mentioned in subsection (1) of section 32. This makes it quite clear to my mind that Parliament cannot be said to have intended that there should be no authorisation when a highway had already been obstructed or when the development had already been carried out. In other words, it emphasises that what is being applied for is an order to enable development to be carried out lawfully. This must be so because ex hypothesi in a case to which section 32 refers, the development has already been carried out on the ground. It is perfectly permissible, consequently, to read section 209 as saying that the Secretary of State may authorise the stopping up of any highway if he *is satisfied that it is necessary to do so in order to enable development* which has been carried out on the ground to be legalised.

I appreciate that it can be argued that the power of the Secretary of State to authorise development ex post facto should be limited to a case where planning permission has been applied for by virtue of section 32

itself. However, once one recognises that section 209 can apply to an application under section 32, the future tense as contended for by Mr. Payton cannot be upheld. An argument seeking to limit retrospective authorisation to the section 32 case can only be based on the argument that the developer who " jumps the gun " must be denied the procedure under section 209 if it is conceivably possible to do so. Such an argument really rests on an inferred intention to penalise such a person by forcing upon him the procedure provided by the Highways Act 1959. While the conditions for the exercise of the power to make an order under the Highways Act 1959 are not the same as those contained in the Town and Country Planning Act 1971, there are many cases where an order could be made under either Act.

Mr. Payton has contended for the applicants that in this present case the application falls to be deal with under section 111 of the Highways Act 1959. I do not see that any worthwhile advantage is to be obtained in this way. It is surely better for the Secretary of State who may have to consider the merits of the development permission, to consider at the same time the highway question. Moreover, it does not always follow that the developer is blameworthy. Genuine mistakes can occur. A builder might be prepared to say that he will pull the house down and start again. Why should not the Secretary of State give his authority in such a case? I regard section 209 as saying that if development is of the kind which involves obstruction of a highway, then the Secretary of State can give his authority so that the development can be carried out legally. Until his authority is given development, although carried out on the ground, has not been carried out legally. The Secretary of State is concerned to give legal status to a development of which he approves. He is not concerned to inquire how far, if at all, the work has been done.

I would dismiss this appeal.

GOFF L.J. I much regret that I am unable to accept Eveleigh L.J.'s conclusion that section 209 of the Town and Country Planning Act 1971 includes power for the Secretary of State to make a completely retrospective order, although on a more restricted construction of the section which I am prepared to adopt, I agree that this appeal should be dismissed.

I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid the possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed. It would also protect an innocent wrondoer, as in *Wood* v. *Secretary of State for the Environment* (unreported), June 27, 1975, where an order had actually been obtained before work started, but it was void for a technical irregularity and it was assumed that a further order could not be made under section 209 or 210.

However, I am driven to the conclusion that this is not possible in view of the words of futurity " to be carried out " which occur in section 209 (1), and I think this is emphasised by the sharp contrast with the expression in section 32 (1) " constructed or carried out, or a use of land instituted, before the date of the application."

Moreover, with all respect, I do not think that any anomaly is involved, in that if the work be started without planning permission, the

A developer will have to have recourse to section 32, and that contains no provision for authorising work upon the highway. The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply, whether or not planning permission was obtained before the work was done or started, and if it has not been finished the permission granted would have to be not only under section 32 to retain the work so far done, but also to authorise the rest, and that would bring in sections 209 B and 210. I do not see how the planning authority or the Secretary of State can be satisfied that an order is necessary " in order to enable development to be carried out " without ascertaining the factual situation in order to see whether there is in fact any part of the relevant permitted development left to be carried out or whether it has all been completed.

Moreover, one cannot escape this difficulty by holding that in law C there has been no development until the work is completed, because development occurs as soon as any work is done, and to say otherwise for the purposes of sections 209 and 210 would be inconsistent with the definition of development in section 22 (1), and with section 23 (1). Any work is a development, even if contrary to planning control: see section 87 (2). It cannot be any the less a development because it is unlawful for D an entirely extraneous reason, namely, that it is built upon the highway. Nor, I think, can it be said that the planning authority or the Secretary of State has to perform a paper exercise, looking only at the plan and ignoring the facts. This is possibly what the legislature ought to have said, but it has not said it. It would be necessary to do unwarranted violence to the language. One would have to read the section as if it said " to be carried out or remain," or " it is or was necessary."

E So I turn to the more limited alternative. Can it be said that if development on the highway has not been completed, then what remains to be done does show that it is necessary to make an order to enable development to be carried out, none the less so because the order will as from its date validate the unlawful exercise?

In my judgment, the answer to that question should be in the affirma- F tive, on the simple ground that what remains to be done cannot be carried out so long as what has already been done remains unlawful and liable to be removed, at all events where the new cannot physically stand alone. It would be a very narrow distinction to draw between that kind of case, for example, building an upper storey or putting on a roof, and a case where what remains to be done can stand alone but is only an adjunct, for example, a garage, of what has to be removed, the house.

G If necessary, I would say that any further building on the site of the highway, even although it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order.

Much reliance was placed by the applicants on paragraph 1 (2) (*c*) of Schedule 20 to the Town and Country Planning Act 1971, but I do not H think that that presents any unsurmountable difficulty. The words " is to be stopped up, diverted or extinguished " clearly refer only to the effect of an order, because the paragraph reads on " by virtue of the order." So it is in no way inconsistent with an order being made to give validity to what remains to be done and indirectly to what has been done in fact but unlawfully. The positioning of the notice is a little more difficult, because the ends or an end of the relevant part of the highway may already have disappeared, but the notice can still be given on the face of whatever

obstruction has been constructed. The general sense of the paragraph is perhaps against my construction, but it is only an administrative provision and certainly does not, in my view, exclude it.

Section 90 (1), which draws a distinction between carrying out and continuing, has caused me some difficulty, but this distinction is not repeated in the final provision in subsection (5) and I do not feel driven by this section from the alternative construction which I have proposed, which is beneficial and which I would adopt.

When it comes to the exercise of discretion, in my view the planning authority or the Secretary of State should disregard the fact that the highway has already been obstructed, for he ought not on the one hand to make an order he otherwise would not have made because the loss to the developer if no order be made would be out of all proportion to the loss to the public occasioned by the making of the order, for that loss the developer has brought upon himself, nor on the other hand should the planning authority or the Secretary of State, in order to punish the developer, refuse to make an order which he otherwise would have made. Punishment for the encroachment, which must in any event be invalid for the period down to the making of the order, is for the criminal law.

I should add finally that Mr. Payton for the applicants made much of the public policy of preserving amenities for ramblers; but in many cases this is not the point, because even if no order be made the developer may well, either before or after development starts, be able to obtain planning consent for revised plans and develop the site, so making the highway no longer a place for a ramble. The relevant considerations will be the desirability (if any) of keeping any substituted way off the estate roads, and the convenience of the way as a short cut, whether or not to a place where one can ramble, and if a diversion is proposed the relative convenience of the old and the new way, whether any different diversion would be better and whether in suitable cases diversion is necessary or whether the way may simply be stopped up.

For these reasons, I agree that this appeal should be dismissed.

STEPHENSON L.J. I am attracted by the construction put by Eveleigh L.J. on section 209 of the Town and Country Planning Act 1971, but I agree with Goff L.J. that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.

Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order *is* necessary in order to enable development *to be carried out* in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it *was* necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development *to have been carried out*. I cannot give what seem to me reasonably plain words that strained meaning unless it can be confidently inferred from their context or other provisions in the Act that that meaning would express Parliament's intention. And I do not find in any of the provisions of this Act to which we have been referred, including section 32, or in the provisions of the Highways Act 1959, any clear indication that what appears to be a requirement that the Secretary of State or a planning authority should be satisfied on the facts that something cannot be done in the future without a diversion order is

A intended to be a requirement that the Secretary of State or a planning authority should be satisfied on paper that something done in the past unlawfully needs to be legalised by a diversion order.

I am, however, in agreement with the view that, on the facts of this case, development was still being carried out which necessitated the authorisation of a diversion order at the time when the diversion order was authorised and confirmed. I agree with the deputy judge that on the B inspector's findings of fact it was then still necessary to enable a by no means minimal part of the permitted development to be carried out.

In my judgment, development which consists of building operations—and it may be development which consists of change of use, as to which I express no concluded opinion—is a process with a beginning and an end; once it is begun, it continues to be carried out until it is completed C or substantially completed. That fact of life may produce the deplorable result that the earlier the developer "jumps the gun" the better his chance of completing the development before the Secretary of State or the planning authority comes to consider whether it is necessary to authorise a diversion order. But it may not save the developer from unpleasant consequences and it does not enable me to attribute to the legislature an intention which it has not expressed.

D I agree that the appeal fails.

Appeal dismissed.
Secretary of State's costs to be paid by applicants.

E Solicitors: *Franks, Charlesly & Co. for Pearlman Grazin & Co. Leeds: Treasury Solicitor.*

[Reported by MISS HENRIETTA STEINBERG, Barrister-at-Law]

F

[CHANCERY DIVISION]

* WESTMINSTER CITY COUNCIL *v.* HAYMARKET PUBLISHING LTD.

[1979 W. No. 1223]

G

1979 Oct. 17, 18 Dillon J.

Rating—Unoccupied hereditament—Surcharge—Commercial building unoccupied for more than six months—Legal charge in favour of mortgagee prior in time to rating authority's charge —Whether rating authority's charge on all interests in land H *—Whether binding on purchasers from mortgagee—General Rate Act* 1967 (*c.* 9), *s.* 17*A* (*as amended by Local Government Act* 1974 (*c.* 7), *s.* 16)

On January 3, 1974, a company acquired certain commercial premises, which it charged by way of legal mortgage in favour of a bank, to secure all moneys and indebtedness present and future owing by the company to the bank. The premises remained empty and unused for a period extending beyond October 24, 1975, and a rating surcharge amounting to £16,940·93 became

Robert Fidler v Secretary of State for Communities and Local Government, Reigate and Banstead Borough Council

Court
Queen's Bench Division (Administrative Court)

Judgment Date
3 February 2010

Case No: CO/5153/2008

High Court of Justice Queen's Bench Division Administrative Court

[2010] EWHC 143 (Admin), 2010 WL 308566

Before: Sir Thayne Forbes Sitting as a Judge of the High Court

Date: 3rd February 2010

Hearing date: 17th November 2009

Representation

Stephen Hockman QC (instructed by Wright Hassall LLP) for the Appellant.
Paul Brown QC (instructed by the Treasury Solicitor) for the First Respondent.
Rupert Warren (instructed by the Borough Solicitor) for the Second Respondent.

Judgment

Sir Thayne Forbes:

Introduction.

1. This is an appeal brought under section 289 of the Town and Country Planning Act ("the 1990 Act"), permission having been granted by Wyn Williams J on 26th January 2009. In these proceedings, the appellant ("Mr Fidler") challenges the decisions of an Inspector ("the Inspector"), duly appointed by the First Respondent ("the Secretary of State"), as set out in his decision letter dated 7th May 2008 ("the decision letter"), in respect of three out of the twelve appeals under section 174 of the 1990 Act that the Inspector determined on that date (i.e. Appeals 1, 2 and 3), whereby he dismissed (*inter alia*) the Claimant's appeal against enforcement notices issued by the Second Respondent on 16th February 2007 in relation to (i) a new dwelling, together with (ii) its associated conservatory and (iii) the patio that Mr Fidler had constructed on his land at Honeycrock Farm, Axes Lane, Salfords, Surrey RH1 5QL ("the land"). The Second Respondent is the Local Planning Authority ("the LPA") for the area in which the land is situated.

2. It is common ground that the central aspect, indeed the key to the outcome, of these proceedings is the appeal against the Inspector's decision in respect of Appeal 1 (i.e. the section 174 appeal against the enforcement notice relating to the new dwelling, hereafter "Appeal 1"). On behalf of Mr Fidler, Mr Hockman QC very properly accepted that the challenge to the Inspector's decisions in relation to Appeals 2 and 3 (i.e. the section 174 appeals with regard to the enforcement notices directed at the new dwelling's associated conservatory and patio) could not succeed unless the appeal against the Inspector's decision in Appeal 1 were to be successful. For that reason, the submissions of the parties to these proceedings were almost

entirely directed to challenging (in the case of Mr Fidler) and defending (in the case of the Secretary of State and the LPA) the Inspector's decision in relation to Appeal 1. The reason why this was clearly the appropriate approach to adopt will become readily apparent as this judgment proceeds.

3. The breach of planning control alleged in the enforcement notice with which Appeal 1 was concerned ("the enforcement notice") is expressed as follows (see paragraph 3 of the enforcement notice): " *Without planning permission, the erection of a dwellinghouse in the approximate position on the attached plan* ". The reasons for issuing the enforcement notice include the following (see paragraph 4): " *It appears to the Council that the above breach of planning control has occurred within the last four years. The building in question was substantially completed less than four years ago* …" The requirements of the notice are as follows (paragraph 5): " *(1) Demolish the dwellinghouse and remove all the resultant materials. (2) Reinstate the land to its former condition.* " The time for compliance is stated to be: " *Twelve months from the date this notice takes effect.* "

4. So far as material, Section 174 of the 1990 Act provides as follows:

> **"174 Appeal against enforcement notice**
>
> (1) A person having an interest in the land to which an enforcement notice relates … may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
>
> (2) An appeal may be brought on any of the following grounds –
>
> (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted …
>
> …
>
> (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
>
> …
>
> (f) that the steps required by the notice to be taken … exceed what is necessary to remedy any breach of planning control which may be constituted by those matters …"

5. Before the Inspector, Mr Fidler relied upon each of grounds (a), (d) and (f) in support of his section 174 appeal in Appeal 1 and, in due course, the Inspector dismissed the appeal on all three grounds. However, the section 289 proceedings before me are concerned only with the Inspector's decision in relation to ground (d), which was itself founded upon the provisions of section 171B of the 1990 Act (often referred to as " *the four year rule* ") which, so far as material, provides as follows:

> (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under the land, no

> enforcement action may be taken after the end of the period of four years, beginning with the date on which the operations were substantially completed."

6. In brief, the basis of Mr Fidler's appeal on ground (d) was that the new dwelling house had been substantially completed by about June 2002, whilst it was still concealed within a shield of straw bales, the top of which was covered with a tarpaulin, that he had deliberately erected in order to conceal the construction of the new dwelling and to take advantage of the four year rule. The new dwelling was revealed when the straw bales and tarpaulin were eventually removed in July 2006, by which time the four year period from substantial completion of the new dwelling had expired. Accordingly, it was Mr Fidler's case on ground (d) that, although he readily accepted that the building operations involving the construction of the new dwelling constituted development for which he had not been granted planning permission, the time limit for taking enforcement action had expired long before the LPA came to issue the enforcement notice on 16th February 2007.

7. Stated broadly, the Inspector dismissed Mr Fidler's appeal on ground (d) on the basis that the overall building operations relating to the construction of the new dwelling included the erection and removal of the straw bales and tarpaulin that had been deliberately put in place to conceal the construction and existence of the new dwelling in order to take advantage of the four year rule. The Inspector then went on to decide that, when considered as a whole, the building operations were not substantially completed until the removal of the straw bales in July 2006. The Inspector therefore concluded that the four-year time limit for taking enforcement action had not expired by February 2007 and dismissed the appeal on ground (d) accordingly.

The Statutory Framework.

8. In addition to the material terms of section 171B and section 174 , quoted respectively in paragraphs 5 and 4 above, the 1990 Act also contains the following relevant provisions:

> (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations, in, on, over or under land, or the making of any material change in the use of any buildings or other land.
>
> (1A) For the purposes of this Act "building operations" includes –
>
> (a) demolition of buildings;
>
> (b) rebuilding;
>
> (c) structural alterations of or additions to buildings; and
>
> (d) other operations normally undertaken by a person carrying on business as a builder.
>
> (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –
>
> (a) the carrying out for the maintenance, improvement or other alteration of any building of works which –
>
> (i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

…

…

(1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.

…

(1) For the purposes of this Act –

(a) carrying out development without the required planning permission …

…

constitutes a breach of planning control.

(2) For the purposes of this Act –

(a) the issue of an enforcement notice …

constitutes taking enforcement action.

…"

The Facts.

9. In his decision letter, the Inspector gave the following succinct account of the main relevant factual circumstances, as part of his findings of fact relating to the new dwelling and its construction:

"148. The new dwelling is sited on what was the north-western corner of the western yard. It is constructed of stone and brickwork with some oak framing and a second-hand clay tiled roof. Two redundant grain silos have been used to form the casing for the stone/brickwork which creates two castellated features at the north-eastern and north-western corners. There is a stain-glass lantern feature over a central hall/gallery area. The house comprises kitchen, living room, study, shower room/WC and separate WC on the ground floor and 4 bedrooms on the first floor, and another room which the appellant said was still to be fitted out as a bathroom. The windows are uPVC double glazed units set within stained timber sub-frames. To the south of the house is a gravelled forecourt whilst to the north is the new patio and conservatory at the north-western corner.

149. Mr Fidler made it quite clear that the construction of this house was undertaken in a clandestine fashion, using a shield of straw bales around it and tarpaulins or plastic sheeting over the top in order to hide its presence during construction. He stated that he knew he had to deceive the Council of its existence until a period of 4 years from substantial completion and occupation had occurred as they would not grant planning permission for its construction. …

150. As an observation, it is evident from the documentary evidence provided that he house was in existence in some form at the time Mr Morden made his inspection in May 2002. The photographs

from that period do show the presence of a large stack of straw bales covered in blue plastic sheeting – which it is accepted were actually straw walls with a void inside in which the house was constructed. …

…

156. … [Mr Fidler] produced a substantial number of bills and invoices concerning the purchase of building materials. There are also letters and statements from tradesmen who worked on the construction of the house and from friends who visited during the building period and those living at Honeycrock Farm. Taken together, along with the evidence of Mr Fidler and his family, I consider this is sufficient to show that, on the balance of probability, the house as a building was constructed by June 2002 and had been lived in for some time prior to that date. …

…

162. … In this case, the weight of evidence before me indicates that at the date the notice was served (16/02/07) the dwelling had been built and in occupation for over 4 years (i.e. by 16/02/03). Some internal decoration may have been outstanding and there is still no bathroom upstairs but a shower room was said by Mr Fidler to have existed by that time, and this was not contested by the Council. …

163. The main point at issue is whether the presence or otherwise of the straw bales encasing the dwelling are of relevance in terms of the consideration of the matter of substantial completion. There is no dispute that they were not part of the structure of the dwelling and would not have required the skills of a builder for erection or demolition/removal. Nevertheless, they were without doubt put there for a purpose and that was to conceal the dwelling whilst under construction and until it was considered that the legal argument on the 4 year rule would succeed. The walls of straw were not placed there by chance but were fundamentally related to the construction of the dwelling. I accept that the act of concealment does not in itself provide a legitimate basis for the Council to succeed as hiding something does not take away lawful rights that may accrue due to the passage of time. However, the ultimate intention as to whether the walls of straw were to remain or be removed is, in my view, material having regard to the authority in Sage .

164. Mr Fidler was questioned by the Council's advocate on whether it was his intention to live behind a wall of straw bales with no outlook other than at a wall of straw and very limited amounts of natural light. He said he could have gone on living that way if need be but I consider this answer to be disingenuous. From his own evidence and submissions it was always his intention to remove the bales once he thought that lawfulness had been secured. It is therefore quite obvious he never intended to continue to live within a straw stack and until the straw was removed he could not enjoy a reasonable level of residential amenity, consistent with normal expectations of what a dwelling house should provide. It might be argued that people choose to live in caves or enclosures with little or no light or outlook. That may be so, but that was not Mr Fidler's intention. He built a house in a traditional form with large numbers of windows in the walls. If he had intended to look out on straw bales 3m away then it begs the question as to why one would go to the trouble of inserting windows at all. The presence of these windows demonstrates his intentions for outlook, not least the tall picture window in the northern elevation at both floor levels which lights the central hall/ gallery area.

10. In paragraphs 169 to 171 of his decision letter, the Inspector went on to express his conclusions with regard to the section 174(2)(d) ground of appeal in Appeal 1 in the following terms:

> "169. … it was never Mr Fidler's intention to build a house which remained encased within walls of straw covered in sheeting. It was always his intention to remove the straw walls thus revealing his edifice once he thought that sufficient time had passed for the lawfulness of the construction to be secured. The day-to-day existence within the dwelling when encased by straw was seen as a temporary situation which would be endured for as long as it took to secure lawfulness. It was not a normal living environment (limited, if any, natural light; no outlook; poor ventilation) or one which was intended as a final outcome. Rather it was a situation that would be tolerated for the time being.
>
> 170. As a matter of fact and degree, I therefore find that the straw bales were part of the totality of the operations and it was necessary for them to be removed before the point of substantial completion was reached. The matter of substance is not that the bales hid the dwelling (although they certainly did) but that they formed part of the totality of the operations in the holistic sense accorded by the authority in Sage . The situation that existed prior to the removal of the straw bales fell short of what the appellant contemplated or intended to carry out and his intentions were not realised until removal had occurred. As this did not happen until July 2006, substantial completion did not occur until that time and this is well within the 4 year period from the date of the service of the notice.
>
> 171. I appreciate that this is a most unusual case and I am not aware of any clear authority that I can draw on which is directly comparable. Sage is a valuable authority on the matter of legal principles but differs in terms of the actual facts. I have interpreted and applied these principles to the best of my judgement. Having regard to the circumstances of the case, I consider that it is right to find against the appellant because the case of lawfulness is not made out on the balance of probability. Unless this test is met the appeal should not be allowed. Accordingly, having regard to the wording of s171B(1), the appeal on ground (d) fails."

Sage -v- Secretary of State for the Environment, Transport and the Regions and another (2003) 1 WLR 983 ("Sage").

11. As can be seen from the terms of paragraph 171 of his decision letter, the Inspector sought to interpret and apply the legal principles stated in Sage , whilst acknowledging that the facts of that case were very different. In Sage the local planning authority had served an enforcement notice alleging that the erection of a dwelling house constituted a breach of planning control. No building work had actually been carried out on the structure during the four years preceding the service of the notice. However, the dwelling itself was not fit for habitation because the ground floor consisted of rubble, there were no service fittings or staircase, the interior walls were not plastered and the windows were unglazed.

12. The landowner appealed against the enforcement notice on the ground that (*inter alia*) the building operations were substantially completed more than four years before the local planning authority had taken any enforcement action (i.e. relying upon sections 171B and 174 (2)(d) of the 1990 Act). The Inspector dismissed this ground of appeal on the basis that the time limit of four years did not begin to run until the building operation involving the construction of the dwelling was substantially completed and that, as a question of fact and degree, the dwelling in question was still in the course of construction and was not " *substantially completed* ".

13. The landowner appealed to the High Court on the ground that, for the purpose of determining the starting point of the four-year period under section 174B of the 1990 Act, " *what have to be substantially completed are those operations and works which amount to a breach of planning control and that operations and works which do not amount to development because they fall within* section 55(2)(a) *are not to be taken into account* "; since all the work remaining to be done on the dwelling in question was either internal work or work that did not materially affect the external appearance of the building it

was, pursuant to section 55(2)(a) , work that did not amount to the development of land for which planning permission was required and that the building operation falling within the compass of section 174B(1) must therefore have been completed more than four years before enforcement action was taken by the local planning authority. The judge allowed the appeal on those grounds and the Court of Appeal upheld that decision.

14. In allowing the local planning authority's appeal, the House of Lords rejected the argument summarised in the previous paragraph in favour of a holistic approach. Thus, at paragraph 24, Lord Hobhouse said this:

> "24. The same holistic approach is implicit in decisions on what an enforcement notice relating to a single operation may require. Where a lesser operation might have been carried out without permission or where an operation was started outside the four-year period but not substantially completed outside that period, the notice may nevertheless require the removal of all the works including ancillary works. …"

Agreeing with Lord Hobhouse, Lord Hope put the matter in this way at paragraphs 6 and 7:

> "6. … it makes better sense of the legislation as a whole to adopt the holistic approach which my noble and learned friend has described. What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not obtained at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard to the building's physical features and design.
>
> 7. If it is shown that all the developer intended to do was to erect a folly, such as a building which looks from a distance like a complete building … but was always meant to be incomplete, then one must take the building when he finished it as it stands. It would be wrong to treat it as having a character which the person who erected it never intended it to have. But if it is shown that he has stopped short of what he contemplated and intended when he began the development, the building as it stands can properly be treated as an uncompleted building against which the four-year period has not yet begun to run."

The Parties' Submissions.

15. On behalf of Mr Fidler, Mr Hockman QC stressed that the breach of planning control alleged in the enforcement notice was "… *erection of a dwelling house* …". He also emphasised that the construction (i.e. the erection) of the dwelling house in question was complete by the beginning of June 2002, having been occupied since October 2001.

16. Mr Hockman submitted that the Inspector had fallen into error in deciding that the erection and removal of the straw bales formed part of the overall building operations relating to the erection/construction of the new dwelling house. It was Mr Hockman's submission that " *building operations* " in section 55(1A) of the 1990 Act is exhaustively defined in subparagraphs (a) to (d) of that subsection, that the erection and removal of the straw bales was not covered by any of those subparagraphs and that, therefore, those activities were neither building operations in their own right nor did they form any part of the

building operations involved in the erection/construction of the new dwelling. Mr Hockman also submitted that nothing in the speeches of their Lordships in Sage was authority for the proposition that you can take into account an activity that is not a building operation as defined (i.e. the erection and removal of the straw bales not forming part of the building), as forming part of the actual building operation itself (i.e. the construction of the dwelling house in question).

17. In support of his submission that the expression " *building operations* " is exhaustively defined in section 55(1A) , Mr Hockman referred to Dilworth v Commissioner of Stamps (1899) AC at page 106 and contended that the context of the 1990 Act shows that the word " *includes* " in section 55(1A) , that precedes the activities identified in subparagraphs (a) to (d), is not merely used for the purpose of adding to the natural significance of the expression " *building operations* " but should be construed as equivalent to " *means and includes* ", thus affording an exhaustive explanation of the meaning of that expression for the purposes of the Act.

18. Mr Hockman submitted that the Inspector should have directed himself by reference to the statutory definition of " *building operations* ", but that he had singularly failed to do so. Mr Hockman referred to the second sentence of paragraph 163 of the decision letter (see above) and submitted that the Inspector's findings of fact in that sentence showed that the straw bales formed no part of the actual structure of the dwelling house and that this clearly placed the erection and removal of the bales outside the exhaustive definition of " *building operations* " in section 55(1A) , because such an activity would not normally be done by a builder (as the Inspector acknowledged). Mr Hockman suggested that the approach adopted by the Inspector, in which he had failed to apply the discipline of the statutory definition of " *building operations* " to the material facts, necessarily led to uncertainty and arbitrariness, both of which undesirable outcomes are avoided if the statutory definition is strictly applied to the factual circumstances of the case.

19. In the alternative, Mr Hockman submitted that if, contrary to his primary submission, the erection and removal of the straw bales did form part of the relevant building operations, then the Inspector erred in law in concluding that those operations were not substantially completed until the removal of the bales. In support of that submission, Mr Hockman relied, in particular, upon the following matters:

(i) the terms of the enforcement notice (see paragraph 3 above);
(ii) the terms paragraph 156 of the decision letter (see paragraph 9 above);
(iii) the fact that the dwelling house had been built and occupied for over 4 years before enforcement action was taken (see paragraph 162 of the decision letter); and
(iv) the fact that the straw bales did not form any part of the structure of the actual dwelling house (see paragraph 163 of the decision letter).

20. On behalf of the Secretary of State, Mr Brown QC (supported by Mr Warren on behalf of the LPA) submitted (correctly, in my view) that Mr Fidler's case was entirely dependent upon the submission that, as a matter of law, the erection and removal of the straw bales could not amount to **or form any part of** building operations within the meaning of the Act. For the reasons developed below, Mr Brown and Mr Warren both argued that this submission was wrong.

21. Both Mr Brown and Mr Warren readily accepted that the erection and removal of the straw bales was not itself a building operation when considered in isolation. However, they submitted that such an activity could nevertheless, as a matter of fact, be found to form part of building operations, when the totality of the operations as originally contemplated and intended is considered (applying the Sage holistic approach). I agree with that submission.

22. As it seems to me, the question whether section 55(1A)(a)-(d) is an inclusive or exhaustive definition of " *building operations* " is not critical to the outcome of these proceedings, although I incline to the view that Mr Brown and Mr Warren are right in their submission that the expression is not exhaustively defined in and thus limited to those matters set out in

subparagraphs (a)-(d). In my view, there is nothing in the context of the 1990 Act that would justify construing " *includes* " in that subsection as meaning " *means and includes* ".

23. More to the point and as Mr Brown observed, on analysis it is clear that the essence of Mr Hockman's crucial submission, that the activity of erecting and removing the straw bales did not and could not form part of the overall building operations (in this case, the clandestine construction of a dwelling in breach of planning control that would have the benefit of the 4-year rule), is that the activity in question had itself to be a building operation within the meaning of the Act. As Mr Brown submitted, there is nothing in the Act or in the authorities to justify such a conclusion that is, in my view, plainly wrong. I agree with Mr Brown that there can be a number of ancillary activities on a construction site that, if considered in isolation, would not be a building operation within the meaning of the Act (e.g. the provision of temporary canteen facilities) but which could nevertheless form part of the contemplated and intended building operations when considered as a whole (in line with Sage). In each case, it is a matter of fact and degree as to whether such an activity does form part of the overall building operations. In this context it is significant, in my view, that the definition of development in section 55(1) of the 1990 Act includes (*inter alia*) the term " *operations* " (a term that is capable of covering a wide range of activities relating to the actual work of building) as opposed to, say, " *works* " (a term that is obviously more restricted in meaning when linked to the expression " *building* ").

24. I therefore agree with both Mr Brown and Mr Warren that the Inspector was quite right to consider the evidence and make appropriate findings of fact with regard to the totality of the building operations which Mr Fidler originally contemplated and intended to carry out. In this particular case, crucial to the Inspector's later findings were his initial conclusions of fact that Mr Fidler knew perfectly well that he would not be granted planning permission for the new dwelling, that his intention was to construct it in a clandestine fashion, using a shield of straw bales to conceal it during construction and in order to deceive the LPA of its existence until he believed that he was in a position to take advantage of the 4-year rule: see paragraph 149 of the decision letter.

25. It is true that the Inspector went on to make findings that the new dwelling was constructed and occupied by June 2002 (paragraphs 156 and 162 of the decision letter) and that the straw bales did not form part of the actual structure of the dwelling (paragraph 163 of the decision letter). However, as it seems to me, the Inspector's findings of fact that are crucial to the outcome of these proceedings appear in the following sentences of paragraphs 163, 164 and 169 of his decision letter which, although already quoted, bear repetition:

> "163. … [the bales] were without doubt put there for a purpose and that was to conceal the dwelling whilst under construction and until it was considered that the legal argument on the 4 year rule would succeed. The walls of straw were not placed there by chance but were fundamentally related to the construction of the dwelling. …
>
> 164. … From [Mr Fidler's] own evidence and submissions it was always his intention to remove the bales once he thought that lawfulness had been secured. It is therefore quite obvious he never intended to continue to live within a straw stack and until the straw was removed he could not enjoy a reasonable level of residential amenity, consistent with normal expectations of what a dwelling house should provide. …
>
> …
>
> 169. … it was never Mr Fidler's intention to build a house which remained encased within walls of straw covered in sheeting. It was always his intention to remove the straw walls thus revealing his edifice once he thought that sufficient time had passed for the lawfulness of the construction to be secured. …"

26. The Inspector's foregoing findings of fact were clearly ones that he was entitled to reach on the evidence and, as it seems to me, were findings that fully justified his critical conclusion that the erection and removal of the straw bales formed part of the totality of the building operations in question (see paragraph 170 of the decision letter), i.e. that this particular activity formed part of the totality of the building operations that Mr Fidler originally contemplated and intended to carry out: see paragraph 6 of the speech of Lord Hope in Sage (supra). As Mr Brown observed, in the light of his findings of fact, the Inspector was fully entitled to find (as he, in effect, did) that there was such a close and intimate connection between the erection/removal of the straw bales and the construction of the dwelling as to lead to the conclusion that the former was a necessary part of the overall building operations relating to the latter. In my view, the Inspector's findings of fact make it abundantly clear that the erection/removal of the straw bales was an integral, indeed an essential ("fundamentally related"), part of building operations that were intended to deceive the LPA and to achieve by deception lawful status for a dwelling built in breach of planning control. In my view, the approach adopted by the Inspector in this case cannot be faulted and I have no hesitation in rejecting Mr Hockman's submissions to the contrary effect.

27. So far as concerns Mr Hockman's alternative submission (see paragraph 18 above), I am satisfied that there is nothing in this particular argument. In the light of his findings of fact, it was a matter of judgment on the part of the Inspector as to whether substantial completion of the operations did not occur until the removal of the straw bales. Nothing that Mr Hockman submitted about this aspect of the matter persuades me that the Inspector's judgment is even arguably wrong. In fact, as it seems to me and in all the circumstances of this case, the Inspector was plainly right to reach the conclusion that he did.

Conclusion.

28. For all the foregoing reasons I have come to the firm conclusion that this appeal must be and is hereby dismissed.

2.6 Bridge or tunnel orders

2.6.1. In dealing with applications for rail crossing orders authorities will need to consider whether a bridge or tunnel could be provided in place of a level crossing being stopped up or diverted. In this context, section 48 of the TWA 92 empowers the SoS to make an order requiring the operator to provide a bridge or a tunnel or to improve an existing bridge or tunnel.

3. Creation agreements

3.1. Section 25 of the HA80 allows highway authorities to enter into agreements with landowners to create new public footpaths and bridleways. These agreements are essentially a matter for the parties concerned. They do not require confirmation and do not come to the Secretary of State for determination. Although sometimes linked to diversion or extinguishment orders, there was, until recently, no express provision for such agreements to be taken into consideration when determining orders. Following a recent court of appeal judgement in the case known as Tyttenhanger (Hertfordshire County Council v Secretary of State for Environment Food and Rural Affairs [2006]). The judges agreed that creation agreements which are conditional and rely on the confirmation of the order cannot be taken into account when determining orders. A sealed unconditional creation agreement already in force can be considered however.

4. Town and Country Planning Act 1990 Cases

4.1 Stopping up or diversion of FP or BW to enable development to be carried out

4.1.1. Following a grant of planning permission, the local planning authority (LPA) may make an order to stop up or divert a FP, BW or RB if they are satisfied that it is necessary to enable that development to be carried out (TCPA 90, section 257). Similar powers are available to the SoS (TCPA 90, section 247).

4.1.2. Before an order can be confirmed, or indeed made, it must be apparent that there is a conflict between the development and the right of

way, such as an obstruction. An outline permission might not give the degree of certainty necessary to evaluate the impact that the development will have upon the way. However, the development does not need to be in the form of a physical interference such as a building on the right of way. For example, a change of use may be sufficient.

4.1.3. Alternatively, following the amendments of section 257 by the Growth and Infrastructure Act 2013, an order may be made in anticipation of planning permission. However, an order made in advance of planning permission cannot be confirmed by either the authority or the SoS until that permission has been granted.

4.1.4. When Inspectors consider an order made under section 257, they should be mindful that the planning merits of the development itself are not at issue in the RoW case and Inspectors should not allow that matter to be re-opened. The weighing up of the planning merits and demerits will have been determined in favour of the development (where planning permission has already been granted), see Vasiliou v Secretary of State for Transport [1991] 2 All ER 77

4.1.5. However, the Inspector does have latitude to consider wider issues. He should consider the overall public interest in diverting or stopping up a right of way and how it will affect those concerned. Considerations could include, for example, matters such as how the confirmation of the order would result in the loss of passing trade (which might be particularly relevant in view of the fact that there is no provision for compensation in relation to this type of order). Such issues may not be a material consideration at the planning stage. Furthermore, there are bound to be some matters which are overlapping – i.e. relevant to both the planning merits and the merit of whether or not an order should be confirmed.

4.1.6. The Inspector is not obliged to confirm an order, even if it appears necessary to enable the development to take place. There is discretion, see K C Holdings Ltd v Secretary of State for Wales (DC) [1990] JPL 353. Non-confirmation of the order might be justified where the way proposed to be stopped up could be diverted instead, or the proposed diversion would not be the most suitable and the order could not be modified.

4.1.7. The power contained in section 257 is only available if the development, insofar as it affects the path or way, is not yet substantially completed (see Ashby and Dalby v Secretary of State for the Environment [1980] 1 WLR 673 and Hall v Secretary of State for the Environment [1998] JPL 1055). If the development has been substantially completed another type of order would have to be made (e.g. under sections 116, 118 or 119 of the HA 1980).

4.2 Land held for a planning purpose

4.2.1. Section 258 of the TCPA 90 gives power to local authorities to make an order extinguishing footpaths, bridleways or restricted byways over land which they hold for planning purposes. An order may not be made unless the authority is satisfied either that an alternative is not required or that an alternative has been or will be provided.

4.3 Surface mineral workings

4.3.1. Section 261 of the TCPA 90 allows for orders to be made under section 247 or section 257 to temporarily stop up or divert a highway (in the case of section 257 orders, for footpaths, bridleways and restricted byways) for the purpose of enabling surface minerals to be worked. This is provided so that the highway can be restored to a condition not substantially less convenient to the public, after the minerals have been worked.

5. Acquisition of Land Act 1981 Cases

5.1 Extinguishment of non-vehicular rights of way

5.1.1. Section 32 of the above Act enables acquiring authorities to make orders for the extinguishment of non-vehicular rights of way over land that is, or could be, or is proposed to be acquired compulsorily. Before making an order, the acquiring authority must be satisfied that a suitable alternative has been or will be provided (or that an alternative is not required) e.g. by way of a public path agreement or order.

5.1.2. Section 32 provides for restrictions on the order making power, such as on the time an order may affect an extinguishment and that the power contained therein may not be used where sections 251 or 258 of the TCPA 1990 apply.

5.1.3. Schedule 6 of the HA 1980 (see section 32(2) of the Acquisition of Land Act 1981) applies to the making, confirmation, validity and date of operation of orders under section 32.

Camden Planning Guidance

Transport

January 2021

Camden

CONTENTS

1. Introduction

What is Camden Planning Guidance?

1.1 The Council has prepared this Camden Planning Guidance (CPG) on Transport to support the policies in the Camden Local Plan 2017. This guidance is therefore consistent with the Local Plan and forms a Supplementary Planning Document (SPD) which is an additional "material consideration" in planning decisions.

1.2 This document should be read in conjunction with and within the context of the relevant policies in Camden's Local Plan, other Local Plan documents and other Camden Planning Guidance documents.

1.3 This document was adopted on 15 January 2021 following public consultation and replaces the Transport CPG (March 2019) which replaced Camden Planning Guidance 7: Transport (September 2011).

What does this guidance cover?

1.4 This guidance provides information on all types of detailed transport issues within the borough and includes the following sections:

a) Assessing transport impact
b) Travel Plans
c) Delivery and Servicing Plans
d) Parking and car-free development
e) Car parking management and reduction
f) Vehicular access and crossovers
g) Cycling facilities
h) Pedestrian and cycle movement
i) Petrol stations

1.5 This guidance supports the following Camden Local Plan policies:

- Policy A1 Managing the impact of development;
- Policy T1 Prioritising walking, cycling and public transport;
- Policy T2 Parking and car-free development;
- Policy T3 Transport infrastructure;
- Policy T4 Sustainable movement of goods and materials;
- Policy CC4 Air quality; and
- Policy D1 Design.

2. Assessing Transport Impact

KEY MESSAGES

- A Transport Assessment, Statement or Note is required for all applications that involve a change in the way that a site is accessed from the highway.
- These documents must clearly demonstrate what measures will be required in order to mitigate the transport impact of the development.

2.1 This guidance aims to make sure that applicants submit all the information required to determine a planning application in terms of the assessment of transport conditions before and after a development has taken place, and transport measures that will need to be secured and/or provided before a development comes into use.

2.2 It relates to the Camden Local Plan Policy A1: 'Managing the impact of development' where the Council will resist development that fails to adequately assess and address transport impacts, requiring mitigation measures where necessary.

When does this apply?

2.3 This guidance applies to planning applications that involve a change in the way that a site is accessed from the highway in terms of the number, mode or profile of trips.

2.4 In line with policy A1 of the Camden Local Plan, the Council will resist development that fails to adequately assess and address the transport impacts of a development. Where the transport implications of proposals are significant, we will require a full Transport Assessment to examine the impact on transport movements arising from the development. In some circumstances where the transport implications are less severe but still significant we would require a Transport Statement rather than a full Transport Assessment.

2.5 Appendix A of this CPG provides guidance on the scale of development that is likely to generate a significant travel demand and therefore requires either a Transport Assessment or a Transport Statement. The land use classes and floorspace thresholds in Appendix A are guidelines, and have been selected on the basis that their travel characteristics are likely to have a significant impact on travel.

2.6 For smaller applications that do not require a full Transport Assessment or Transport Statement, the minimum information outlined below should be submitted as part of a supporting transport note or incorporated into the Design and Access Statement.

How should Transport Assessments be prepared?

2.7 At an early stage, such as during pre-application discussions, applicants should discuss with the Council the scope of the Transport Assessment, and the most appropriate methods to use (e.g. trip generation, data sources, traffic modelling requirements). The level of information contained within the Transport Assessment should relate in scale and kind to the particular development.

What should the Transport Assessment include?

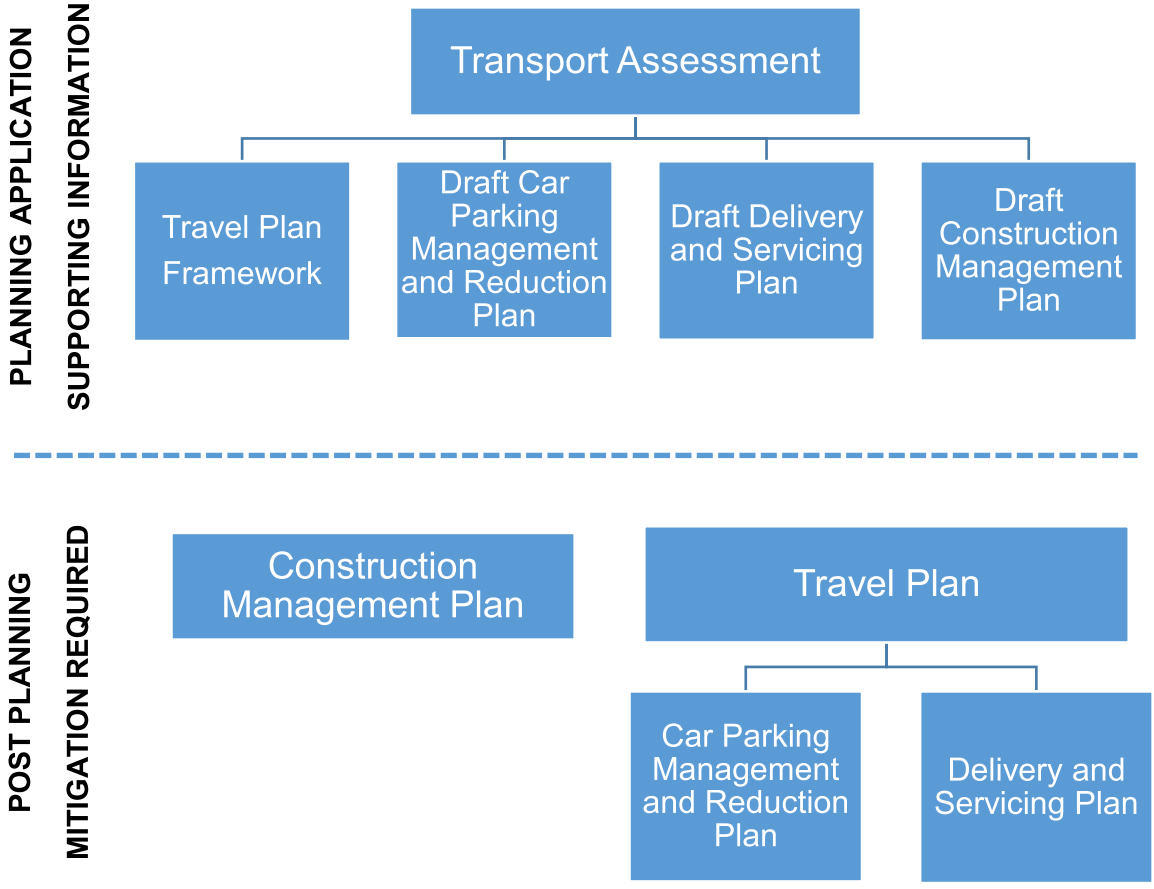


Figure 2.1 Stages of the Transport Assessment or Statement

2.8 A Transport Assessment or Statement should generally include the information set out in Appendix B at the end of this guidance, although specific detail can be confirmed during scoping discussions held with the Council.

2.9 The assessment must demonstrate how the development will impact transport on a micro (site and surroundings), local neighbourhood and a network (London-wide) scale.

2.10 Where a development requires approvals from Transport for London (TfL), additional information may be sought by TfL in order to assess the transport impacts of the development. For further guidance on this, reference should be made to Transport for London's Transport Assessment guidance.

2.11 For developments that do not require a formal Transport Assessment or Statement, some information will still need to be submitted as part of the standard planning application process. This would typically include:

- How the existing and proposed development ties into the public highway, including the provision of Level Plans where necessary (see Section 7 of this guidance);
- Access arrangements for all modes of transport visiting the site, including details of how step-free access would be achieved;
- Public transport accessibility (PTAL);
- Details of existing and proposed servicing arrangements;
- If the development has vehicular parking, details should be included in a Car Parking Management and Reduction Plan (see Section 6 of this guidance); and
- Information with regards to construction, specifically including how the impact of construction on the public highway will be minimised, for example, avoidance of closures to pedestrian and cycle facilities.

What should the transport assessment achieve?

2.12 The information submitted within a Transport Assessment or Statement, or as part of a Transport note or Design and access statement for smaller applications, should enable the Council to consider how the proposed development impacts on the existing transport arrangements. The assessment will show that either:

- The development is acceptable in its proposed form without any alterations to existing transport arrangements;
- Some alterations would be needed to the development or to the transport network in order to accommodate the travel it would generate in an acceptable way; or

- The development could not proceed without unacceptable harm to travel or the transport network, in which case the proposal would be contrary to Policy A1.

What is required to make a development acceptable?

2.13. If the Transport Assessment shows that mitigation is required in order to accommodate the development, details of the specific amendments and mechanisms will need to be agreed, for example Section 106 Planning Obligations that are to be secured prior to the development being implemented. Measures to mitigate the transport impact will be secured by a Section 106 legal agreement or by planning condition as appropriate.

2.14. Examples of mitigation might include a legal agreement to ensure the submission and implementation of:

- Financial contributions required to implement changes to off-site arrangements for pedestrians, cyclists, public transport or motor vehicles;
- A Travel Plan to manage travel demand on a local, neighbourhood and network scale (detailed in Section 2 of this document);
- A Car Parking Management and Reduction Plan to manage, monitor, enforce and reduce any on-site car parking facilities (detailed in Section 6 of this document);
- A Delivery and Servicing Plan to manage on and off-site servicing arrangements following completion (detailed in Section 4 of this document); or
- A Construction Management Plan for the period from commencement of construction to full operational occupation of the development to manage on and off-site construction traffic, delivery and removal of materials, and any temporary changes to other traffic movements (including pedestrian and cyclist movements) in and around the site.

2.15 Other examples of mitigation may be secured by a planning condition. These could include:

- Linking implementation of the scheme to the completion of planned transport provision with secured funding;
- Ensuring that implementation is in phases, such that each phase follows completion of any necessary planned transport provision with secured funding;
- Securing the provision and ongoing retention of cycle parking facilities and electric vehicle charging points; and

- Securing all proposed changes to on-site provisions for pedestrians, cyclists, public transport or motor vehicles. Examples of required mitigation might include amendments to cycle parking and supporting facilities such as employee lockers and showers, picking-up and setting-down, parking, storage and/or loading and unloading.

Financial contributions for walking, cycling & public realm improvements

2.16 In instances where existing or committed capacity cannot meet the additional need generated by the development or where the existing transport network cannot safely accommodate the proposed trips to the site, we will expect a financial contribution to be secured as a planning obligation by a legal agreement to support and improve the pedestrian and cycling environment and public realm, mitigating the transport impact of development proposals.

2.17 The scale of the contribution will be proportionate to the level of intervention required to mitigate the impact of the development. The impact of each planning application is assessed in its own right and financial contributions are bespoke to each proposal. For an indication as to what financial contribution will be required, applicants are encouraged to engage with officers at an early stage of the planning process.

Financial contributions for highway works

2.18 The Council, as the local highway authority, is responsible for the quality, maintenance and safety of the borough's roads, footpaths and other adopted spaces. It will determine how highway and/or other related works should be designed and implemented, in consultation with developers, to ensure that they are carried out in accordance with Council procedures and standards. Developers should refer to the Camden Streetscape Design Manual for LB Camden managed roads.

2.19 The Council may require works to be carried out (e.g. to surrounding streets and public spaces) to ensure that the site can be safely accessed.
The highway works will seek to repair any construction damage to transport infrastructure or landscaping; reinstate all affected transport network links and road and footway surfaces; and ensure that the highway network adjacent to a site is of a suitable standard to accommodate any changes to activity arising from the development. Highway works will also include any changes to vehicular access and may also include the design and implementation of new routes to be adopted, owned and managed by the relevant highway authority. Examples of site-specific and public realm works are listed in Appendix C. In some situations it will be necessary for the highway works to be completed before the development approved by the planning permission can commence.

2.20 For a development that requires highway works, all works on the public highway in relation to development proposals will be undertaken by the Council at the developer's expense; in which case a financial contribution for the anticipated works will be secured as a planning obligation through a legal agreement. Alternatively, the developer can (with the Council's agreement) design the works themselves to a specification set by the Council. The Council will then undertake these works at the developer's expense. In both cases, the Council will exercise control over the design of the works and be involved in the approval and implementation of the scheme.

2.21 Any works which will or may affect the structural integrity of the highway requires approval and inspection by the Engineering Service's structural engineers. Works may be subject to a formal 'Approval in Principle' under highways legislation. The Council will always have the right to intervene (at the developer's expense) if any works are not to the Council's reasonable satisfaction.

2.22 We will secure a financial contribution via a combined Section 106 and Section 278 legal agreement for the highway works that the developer will be required to pay before commencing development. This is based upon estimates of anticipated works (including fees) prepared by LB Camden. If in the event that the actual works cost more than originally estimated, the developer will be liable to pay additional costs (up to a maximum agreed figure). On completion of the works, the Council will certify how much money was expended in undertaking the works. If the actual works required cost less than originally estimated, for example if the public highway was not damaged as much as was estimated for, the Council can refund the applicant any unspent financial contribution. The Council may also in some cases require the developer to pay a one-off negotiated returnable bond or contingency sum in addition to the estimated cost, the size of which will be based on the nature, scale and risk associated with the particular works. The developer will also be required to pay the Council's costs in respect of any necessary traffic management orders or other appropriate costs related to the work where these are identified by the Council.

2.23 For applications where highways works would be necessary on the Transport for London Road Network (TLRN), Transport for London (TfL), who are the highway authority for the TLRN, will require a separate Section 278 agreement with the applicant which will include details of the scope of works. Where the development would involve an alteration to or a new access onto the TLRN, Transport for London has ultimate responsibility for indicating what is acceptable. Planning applications that interface with the TLRN or Strategic Road Network (SRN) may also be required to perform a 'Healthy Streets Check' and/or undertake all relevant audits with TfL approved staff.

2.24 For applications on borough boundary roads or accessed via private road, separate agreements with adjoining boroughs and/ or private land owners may also be sought if the scope of works lies outside of Camden's jurisdiction.

Financial contributions for other mitigation measures

2.25 Financial contributions may also be sought to support other mitigation measures such as TfL's Cycle Hire and Legible London schemes. These may be sought, for example, where a development will lead to more intensive use of the site, where the development is located in an area with high rates of walking and cycling or where there is currently insufficient coverage of these schemes. More information on these schemes and other measures can be found on TfL's website or can be provided by the Council on request.

2.26 Where public transport provision is not adequate to serve a development (e.g. in terms of capacity, frequency, reliability, boarding points or access to boarding and vehicles), and the absence of such provision would make the development unacceptable the Council may seek a contribution to public transport provision in accordance with the relevant statutory tests.

2.27 The Council will generally seek contributions towards facilities that assist the use of public transport services which have an existing or proposed boarding point within a convenient walking distance of the development. For bus services, a convenient walking distance is generally up to 400 metres. For rail services, a convenient walking distance is generally up to 800 metres.

Construction Management Plans

2.28 Construction Management Plans (CMPs) set out a package of measures and practices that are required to manage the impact of a scheme's demolition, excavation and construction works. Developers are required to identify any potential negative impacts within the CMP and must set out the mitigation measures required. Examples could include, but are not limited to: time restrictions on construction vehicles attending a site that is located near to a school, the identification and signposting of reasonable alternative routes for pedestrians/cyclists or ensuring the construction work is set back away from pedestrian footways and cycle routes (or facilities) to maintain access and safety for vulnerable road users. More information on the measures can be found in Local Plan Policy A1 and on Camden's CMP website.

2.29 The Council has created a CMP pro-forma which is tailored towards the specific needs of the borough and should be used by applicants submitting a CMP or a draft CMP in all instances. The criterion in the pro-forma are drawn from

relevant aspects of Transport for London's (TfL) Construction Logistics Plans and follow TfL's construction safety best practice guidelines. The pro forma also outlines the Council's Construction Logistics and Community Safety (CLOCS) requirements, which provide the framework to the Transport section. Camden is a CLOCS Champion, and as such requires all construction sites with a CMP to be CLOCS compliant. Enhanced Considerate Constructors Scheme (CCS) registration includes CLOCS monitoring and will be required of all applicants submitting a CMP. The latest version of the CMP pro-forma is available on the Council's CMP website or can be provided on request from planningobligations@camden.gov.uk.

2.30 Whether a CMP is required for a particular development is assessed on a case by case basis. For planning applications that require pre-application advice, the requirement for a CMP will be discussed ahead of the full planning application. For developments that do not require pre-application advice, the need for a CMP will be discussed during the planning application process. Where a CMP is required, applicants should include a draft at planning application stage in order for the Council to make a thorough assessment of the proposals.

2.31 CMPs are secured as a planning obligation through a legal agreement and the pro-forma must be agreed by the Council prior to commencement of work starting on site. A Demolition Management Plan (DMP) will also be sought when the Council deems it necessary to separate out the demolition and construction phases of a project.

2.32 A CMP/DMP implementation support contribution will also be secured as a planning obligation by a legal agreement which must be paid prior to commencement of works. This cost covers the review and monitoring elements and in some instances, meetings with the developer and local stakeholders.

2.33 Please also be aware that Neighbourhood Plans in the Borough may contain additional advice and guidance relating to CMPs.

Travel Plans, Car Parking Management and Reduction Plans and Delivery and Servicing Plans

2.34 As shown in Figure 2.1, other measures to manage the transport impacts of a development include Travel Plans, Car Parking Management and Reduction Plans and Delivery and Servicing Plans. Information from each of these documents should form chapters of the Transport Assessment as they will form part of the assessment of the planning application.

2.35 Further information on these documents is available in Section 3 (Travel Plans), Section 4 (Delivery Servicing Plans) and Section 6 (Car Parking Management and Reduction Plans) of this CPG.

Further information

2.36 All Planning Obligations are secured by a Section 106 legal agreement. Financial contributions relating to highway works and public realm improvements are secured by combined Section 106 and Section 278 agreements. Car-free developments are secured by Section 106 agreements combined with Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 and Section 1(1) of the Localism Act 2011. We are using these Acts in addition to Section 106 of the Town and Country Planning Act (rather than instead of it). For more detail on how obligations are secured, see Camden's supplementary Planning Guidance CPG: Developer Contributions.

2.37 Additional guidance on Transport Assessments from the Department for Transport can be viewed at: https://www.gov.uk/guidance/travel-plans-transport-assessments-and-statements

3. Travel Plans

KEY MESSAGES

- Travel Plans enable a development to proceed without adverse impact on the transport network through promoting a greater use of sustainable travel and thereby helping to tackle congestion and air pollution.
- The requirements of a travel plan will be tailored to the specific characteristics of the site and nature of the development.

3.1 This guidance sets out why travel plans are sought, what they are intended to achieve and can be used as a guide for those who are required to provide a travel plan. This documents includes general guidance required for all travel plans together with specific information on the following:

- Workplace Travel Plans (higher education institutions should be treated as workplace Travel Plans);
- School Travel Plans including other educational institutions such as nurseries and colleges;
- Residential Travel Plans;
- Other Travel Plans; and the
- Monitoring and Measures Financial Contribution.

3.2 This section of the CPG will also cover the following:

- How a travel plan should be structured;
- The background information which is required;
- The measures to include in a travel plan;
- Objectives and targets;
- Travel Plan management by the development owner;
- The Action Plan; and
- Monitoring and review of the travel plan.

When does this apply?

3.3 In line with Local Plan Policy A1, the Council will expect a travel plan to be prepared for any planning application that will significantly increase travel demand or would have a significant impact on travel or the transport system.

3.4 The National Planning Policy Framework (NPPF) states that all developments which generate significant amounts of movement should produce a travel plan. Travel Plans are also required by the London Plan (2016) and the Mayor's

Transport Strategy (2017) to deliver sustainable development in London. The latest TfL guidance, Travel Planning Guidance (2013) requires objectives aimed at promoting sustainable travel to, from and within a development.

3.5 All travel plans are secured as a Planning Obligation via a Section 106 legal agreement in conjunction with a Measures and Monitoring financial contribution.

3.6 Whilst each travel plan is unique to a development, there are generally two types of travel plan: Local and Strategic. For example, a residential development of between 50 and 80 units would generally be classified as requiring a Local level travel plan; whereas a development with over 80 units would be classified as requiring a Strategic level travel plan. The relevant thresholds are set out in Appendix D, and they detail each land use class and set out the corresponding floor area which will trigger a travel plan.

What are Travel Plans?

3.7 Travel Plans are a way in which developments can contribute to meeting targets on traffic reduction, improving air quality and increasing sustainable travel. A travel plan is a package of measures, which is designed to reduce single occupancy car use and thereby increase sustainable travel. Any other aims which may have been identified within the transport assessment should also be addressed via the package of measures in the travel plan.

3.8 Where a travel plan is necessary in terms of Policy A1, and the thresholds set out in Appendix D, it will be secured by a Section 106 agreement. This is because the applicant will rarely be the final occupier of the development and a travel plan will require ongoing development and monitoring following the initial occupation for at least a five year period. It is envisaged that through the use of travel plans over the monitoring period, the nature of promoting sustainable and active travel will become embedded within the culture of the development. Travel Plans should be treated as live documents to ensure the targets and measures within the plan can be developed and refined over time. Targets should be provided for each surveying and monitoring period, typically Years 0, 1, 3 and 5, unless otherwise agreed (e.g. for larger or phased developments).

3.9 Whilst the type of travel plan varies for particular uses (e.g. residential, workplace, school travel plan), the overall aims of travel plans in Camden will focus around similar themes, such as:

- Promoting active and sustainable travel with the aim to increase mode share;

- Reducing the traffic generated by the development to significantly reduce the number of non-essential car trips;
- Encouraging good urban design principles that open up the permeability of the development for walking and cycling linked to the Design and Access Statement; and
- Addressing any specific problems identified within the site's transport assessment.

3.10 Each travel plan will include a variety of measures tailored to the specific development which will promote and encourage sustainable and active travel.

3.11 Additionally, all travel plans must consider visitor travel to and from the development and should show how visitor travel can be sustainable and be accommodated without causing undue harm to the surrounding transport network.

Workplace Travel Plans

3.12 A workplace travel plan will be specific to each individual site and the nature of the business activity there (as discussed in paragraph 3.1, higher education institutions should be treated as requiring workplace travel plans). As with residential travel plans, thresholds for workplace travel plans are set out in Appendix D. The focus should be on giving priority to active travel, then reducing non-essential car travel. Workplace travel plans are suitable for any organisation that generates a significant number of employee trips including offices, hospitals, hotels, distribution centres, large shops and supermarkets, cinemas and theatres, primary care centres, GP surgeries etc. School car parking should be monitored through School Travel Plans which are discussed later in this guidance.

3.13 A workplace travel plan should address staff travel to and from work and on business. It is also required to address visitor, client and customer travel. Other aspects such as suppliers making deliveries, contractors undertaking work on site as well as fleet procurement / management should be taken into account within travel plans where they are an important aspect of the development.

School Travel Plans

3.14 A School Travel Plan (STP) can bring benefits of safer and more sustainable transport for the whole community. The Camden Local Plan has identified Hampstead and Belsize as areas where the school run causes particular problems. In these areas, STPs should be very ambitious in order to overcome the issues surrounding the school run. Each STP will need to be designed to

take into account and be tailored to local circumstances. An STP can potentially result in:

- Safer walking and cycling routes around schools;
- Improved school grounds with provision for bicycle and scooter storage;
- Healthier, more active pupils and families, contributing to a pupils' 60 minutes a day of physical activity;
- A reduction in the number of cars and congestion around schools;
- More accessible school sites;
- A better environment with less pollution around schools; and
- Increases in attendance and attainment.

3.15 All schools or educational establishments will be expected to develop a STP in line with current practice provided by Transport for London (as discussed in paragraph 3.1, educational institutions such as nurseries and colleges should provide school travel plans). TfL STARS (Sustainable Travel: Active, Responsible, Safe) is a travel planning and monitoring tool for STPs. In some circumstances, developers may be required to submit a Camden specific STP if the scope of the plan is beyond that set out in the STARS template. For example, when a new school site is being built.

3.16 All STPs have to be sent to Camden Council and TfL for approval. It must also be signed and approved by the school's Head teacher, or STP champion (this can be a school governor or teacher) before submission. STPs are submitted via the TfL STARS website at the following link: www.stars.tfl.gov.uk. They are then assessed and approved by TfL and Camden's School Travel Plan Officer. For further information on the potential benefits of STARS and case studies visit Camden Council's School Travel Plan website.

CASE STUDY: St Anthony's School NW3

- On STARS since 2013 and awarded Gold in 2016.
- Achieved a 12% increase in walking/scooting/ cycling to the school from 2013 to 2016.
- A 3 % decrease in car use to school from 2013 to 2016.
- To achieve this pupils have taken part in Pedestrian Skills Training, Bikeability and Walking Trips including the promotion of active and sustainable travel through news letters home, school events and curriculum activities.

Residential Travel Plans

3.17 Residential travel plans provide a key mechanism for ensuring that sustainable travel is an integral feature of a development. Each one should form a holistic package of measures integrated into the design, marketing and occupation of the site rather than 'retrofitted' once the development is established. The thresholds for residential travel plans are set out in Appendix D and discussed above in paragraph 3.6.

3.18 Residential travel plans are concerned with journeys made from a single origin (home) to multiple and changing destinations (and vice versa). Each Residential travel plan is site specific, with detailed measures partly determined by site opportunities and constraints such as the location of existing public transport routes, health & community facilities and workplaces in the immediate area. A Residential travel plan, prepared by the developer should support and promote walking, cycling and public transport use. It should include the physical measures which have been agreed within the planning permission, such as cycle parking. However, the majority of the emphasis of the travel plan should be on supporting measures such as marketing, promotion and awareness-raising of sustainable travel initiatives and opportunities among residents.

3.19 Like all travel plans, residential travel plans are secured via a Section 106 legal agreement where it will state that all occupiers and users, including visitors, of the development must be consulted on the travel plan. This can be via travel

surveys to help examine travel patterns, attitudes towards sustainable travel and the most effective measures for promoting sustainable travel. The travel plan itself will last for five years, with an aim that sustainable travel will become embedded within the culture of the development.

Other Travel Plans

3.20 In some circumstances bespoke travel plans, such as for short-term events, may be required. These will be requested on a case by case basis and will promote a greater use of sustainable travel options, helping to tackle congestion and air pollution as stated in the Key Messages at start of this guidance.

Monitoring and Measures Financial Contribution

3.21 A Monitoring and Measures financial contribution will be secured as a Planning Obligation via a Section 106 agreement in conjunction with each travel plan. The Financial Contribution allows the Council to monitor, comment and provide advice on the progress of the travel plans and covers the provision of certain measures within the travel plan, such as Cycle Skills training, Camden's Cycle Loan Scheme and walking initiatives delivered by the Council or voluntary sector partners.

3.22 A detailed Advice Note on the breakdown of the Monitoring and Measures financial contribution for travel plans can be found on Camden's Planning Obligations website. There are indicative standard charges for Local and Strategic level travel plans, although applicants should be advised that in some circumstances fees may differ depending upon the individual site's needs. The difference in monitoring and measures financial contribution for Local and Strategic sites relates to the complexity of the sites and therefore the level of time that will be required for the reviewing and monitoring of those travel plans.

3.23 The Monitoring and Measures financial contribution must be paid to the Council in full prior to the first occupation of the development.

How should a travel plan be structured?

3.24 Generally, a full travel plan should be split into the following sections:

a) **Background**: detailed information about the development.
b) **Policy Context**: brief summary of national, regional (London Plan, MTS) and local (Camden Local Plan, Camden Transport Strategy).
c) **Site Assessment**: details of local transport services, walking and cycling routes within the area.
d) **Travel Surveys**: details of surveys, of occupants and users of the site that have been undertaken / are to be undertaken to develop baseline.

e) **Objectives**: what the travel plan hopes to achieve (increases in walking and cycling, reduction in car trips, reduction in emissions etc).
f) **Targets**: Specific targets for modal shift. Targets should be 'SMART' = Specific, Measurable, Achievable, Realistic and Timely.
g) **Package of measures**: Details of what initiatives will be implemented in order to achieve the set targets.
h) **Management**: Details of how the travel plan will be managed and contact details of the Travel Plan Coordinator (TPC).
i) **Monitoring and Review**: How and when the travel plan will be monitored and when this will be reported to the Council.
j) **Action Plan**: A comprehensive list of the measures which sets out what will be implemented and when. These are set aside from the objectives and targets identified above.
k) **Funding**: How the travel plan will be funded on an ongoing basis to ensure the travel plan will be in place for the lifetime of the plan.
l) **Appendices**: Any extra relevant documentation or information. A draft travel survey should be included in the appendices for Camden Officers to review prior to it being implemented.

What background information should be provided?

3.25 In general, the level of detail regarding the background, policy context and the existing transport conditions in the area, should provide an overview and be kept succinct.

3.26 Details should be provided relating to the development, namely its physical form and relationship with the surrounding network and how the development's daily operations will impact on transport. The travel plan should set out in particular:

a) The number of employees, visitors and residents within the development;
b) Trip generation predictions (for AM/PM peak and the whole day) and any relevant details about shift patterns or operational requirements that may be relevant to transport impact;
c) Access to public transport services;
d) The operational number of car parking spaces, including those dedicated for disabled spaces and those for car club and Electric Vehicles;
e) How these will be allocated, operated and number of spaces reduced e.g. dedicated spaces for car clubs and Electric Vehicles. In some cases a Car Parking Management and Reduction Plan will be requested as a separate planning obligation and this can be incorporated within a travel plan. Further detail on what information needs to be included within a Car Parking Management and Reduction Plan can be found within Section 6 of this Planning Guidance document;
f) Information with regards to the number of deliveries and how these will be managed, including delivery location and the type of vehicles likely to be servicing the site. In some circumstances a Delivery and Servicing Plan will be secured as a separate planning obligation and this can be incorporated within the travel plan.

Further detail on what information needs to be included within a Delivery and Servicing Plan can be found within Section 4 of this Planning Guidance document;

g) The number, type and location of cycle parking facilities and whether they are covered and secure;
h) The provision of supporting facilities (lockers, maintenance kits) for those who wish to use active travel methods and how they are accessed; and
i) A list of any site specific barriers for people reaching or moving through the site on foot, post implementation of the development.

What sort of measures are expected?

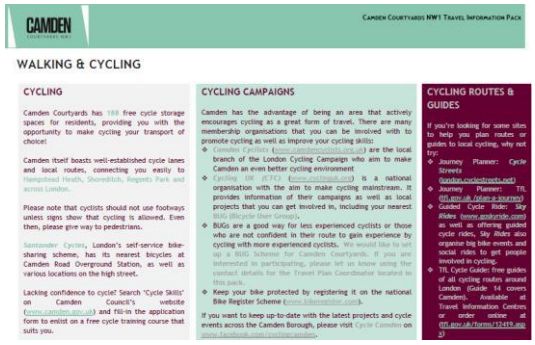
3.27 Travel Plans are bespoke and should be tailored to the specific needs of each site so that they are effective. All measures should seek to deliver the objectives and Camden's sustainable transport aims, of which these could include but are not limited to:

- Promotion of Camden's Cycle Loan Scheme ;
- Welcome / Travel Packs;
- Promotion of the Community Cycling Programme;
- Promotion of Cycle Skills Training;
- Formation of a travel plan steering group;
- Promotion of Led and Health Walks within Camden in line with our future 'Walking Action Plan' ; and
- Promotion of cycling events in Camden and wider London.

3.28 The measures largely relate to the promotion and marketing of active and sustainable transport to residents, employees and visitors. This list is not exhaustive and there may additional measures which are appropriate for particular sites and operations. In general, unless there is a clear reason to exclude a measure based on the specific nature of a development, the Council will ask for all the measures to be included in each travel plan before approving it.

CASE STUDY: Camden Courtyards development NW1

- The Camden Courtyards development was granted planning permission in 2013 and a travel plan was secured under a Section 106 legal agreement.
- The travel plan was approved by the Council in 2016 and the residential units were first occupied in February 2018.
- As part of the moving in process all residents were provided with a Travel Information Pack which included local events, walking and cycling advice and the promotion of specific measures as agreed within the travel plan.
- The development's travel plan Coordinator undertook the baseline monitoring report in March 2018 and following high interest from residents in forming a travel plan steering group, an online group for residents has been set up.



Objectives and Travel Plan Targets

3.29 The objectives help to focus the overall aim of the travel plan, inform the basis of setting targets and describe the key goals that the travel plan seeks to achieve (i.e. encourage sustainable movement to and from the site). When creating objectives for the travel plan, it is important to ensure that they are linked to the specific context of the site which has been set out in the site assessment section.

3.30 It is important that the Council is able to ascertain the likely transport impact of a proposal and we will expect travel plans to include targets specific to the development itself. A thorough transport assessment, which should include information about measures required in order to mitigate or negate any impact, can help inform the setting of these targets.

3.31 All targets provided within travel plans should be ambitious, showing a high mode share of active travel. Targets should also be SMART, these are defined as:

- **S**pecific: identifying precisely what needs to be achieved;
- **M**easureable: over the duration of the target period, allowing for regular evaluation of effectiveness;
- **A**ppropriate: and linked to the overall objectives and aims;
- **R**ealistic: in terms of the potential of being achieved over the duration of the targets; and
- **T**imed: the targets must define a date and series of dates by which it is expected to be achieved (e.g. reduce single occupancy trips by X% by X date).

Travel Plan Management

3.32 It is important that an effective management structure and budget is secured by the developer for the full length of the travel plan monitoring period to ensure full implementation of all the measures set out within the plan. The overarching responsibility for the plan will be passed from the developer to the development's management company, or other appropriate person, where a Travel Plan Coordinator must be appointed to oversee, implement, monitor and review the development's travel plan. The TPC will to ensure that the travel plan measures continue to be applied. The travel plan's budget, as determined and secured by the developer, should also account for the appointment of the TPC role and must cover the costs of implementing the travel plan.

3.33 Details of the TPC should be included in the travel plan, or if this is not possible, a nominated point of contact at a senior level in the organisation. Any other individuals who will be involved in managing travel plan initiatives should also be identified.

3.34 In the majority of circumstances, the TPC will not have been appointed when the TP is being drafted and submitted for approval to the Council by the developer. Therefore it must be stated within the travel plan submitted to the Council that contact details of the future appointed TPC will be provided to travel plan officers at travelplans@camden.gov.uk.

Action Plan

3.35 The Action Plan is a key element of the travel plan and acts as a management and organisational tool for the appointed TPC. It should focus on the TPC's milestones and take the form of a concise programme for delivering the

measures set out within the travel plan. Short, Medium and Long-term actions, timescales and responsibilities should be included as well as an explanation of the handover process from the developer to the TPC. In some circumstances the TPC will not be appointed at the time the travel plan is being drafted. The funding source for the measures should also be provided within the Action Plan.

3.36 Each development must ensure that the Action Plan links closely with the measures set out in the travel plan and the objectives and targets that have been identified.

Monitoring and Review of the Travel Plan

3.37 A clear monitoring programme should be provided detailing the surveys that will be undertaken and the frequency of monitoring data provided to the Council. The majority of travel plans follow a monitoring strategy which requires monitoring reports to be provided to the Council 6 months following the occupation of the development (baseline data) and then further monitoring reports on the first, third and fifth year anniversary following the 6 month baseline. However, a longer period may be required for larger or more complex phased developments, and this will be agreed with the Council.

3.38 Draft Travel Surveys should be provided as an appendix to the travel plan which will allow travel plan officers to assess if data is being captured correctly. This will also help the TPC when they are appointed before the occupation of the development.

3.39 Travel Plans must also include detail as to who will be responsible for the monitoring and how this information will be reported to the Council by the TPC. The developer must ensure there is adequate funding secured for undertaking the monitoring surveys and production of reports for the lifetime of the plan. This must be confirmed and detailed within the plan.

3.40 Should a development fail to survey or monitor in accordance with the Travel Plan requirement of the Section 106 agreement, relevant enforcement measures will be used.

4. Delivery and Servicing Plans

KEY MESSAGES

- The need for a Delivery and Servicing Plan (DSP) should be identified in the Transport Assessment.
- A framework/draft DSP will form part of the Transport Assessment; the DSP itself will form part of the Travel Plan or be a standalone document, secured as a Section 106 planning obligation.
- The use of the term 'Delivery and Service Plan' is interchangeable with the term 'Delivery and Servicing Management Plan'.

4.1 This guidance explains how DSPs can be used to manage and mitigate the potential impacts of deliveries and servicing on the amenity and safety of the general public.

4.2 It relates to Local Plan Policies A1 (Managing the impact of development), A4 (Noise and vibration), CC4 (Air quality) and T4 (Sustainable movement of goods and materials). Policy A1 specifically refers to the requirement for Delivery and Servicing Management Plans.

4.3 This section should also be read in conjunction with the waste and recycling storage guidance found in the Camden Planning Guidance document CPG: Waste.

When does this guidance apply?

4.4 This guidance applies to all development proposals which, from a delivery and servicing perspective, are likely to have an impact on the amenity of occupiers, neighbours and road users in terms of noise and vibration, air quality, congestion and road safety.

4.5 In order to proactively manage delivery and servicing arrangements, the Council will seek DSPs for all major developments, and for those developments where it is identified through a Transport Assessment that the scheme is likely to impact on amenity or the safe and efficient operation of the transport network. Examples of when a DSP should be prepared are:

- The expected number of deliveries at any one time exceeds the capacity of the onsite loading provision;
- The existing on-street provision limits additional loading from proposed development;

- The cumulative impact of deliveries from the site and those sites within the vicinity adversely affects the transport network;
- The site is adjacent to existing infrastructure, for example, cycle lanes or bus stops; and/or
- Loading occurs on a high street or within a busy town centre.

4.6 The Council will also seek to secure DSPs for any development required to submit a Travel Plan (see Appendix D for Travel Plan thresholds).

How are DSPs secured?

4.7 A framework/draft DSP will be required as part of the planning application, typically as a chapter within the Transport Assessment, Transport Statement or other supporting transport information (see Section 2 of this guidance, Assessing Transport Impact).

4.8 In order to ensure the ongoing management of DSPs for future occupiers of the site, where a development is required to submit a Travel Plan, the DSP should form a chapter of the Travel Plan. For instances where a DSP is required but a Travel Plan is not, a standalone DSP document will be secured.

4.9 DSPs are required once planning permission has been granted and are secured as a planning obligation via a section 106 legal agreement.

Aims of a Delivery and Servicing Plan

4.10 The aim of a DSP is to minimise motorised freight movements, mitigating against the negative impacts of freight movement in general, in particular those of motorised freight traffic.

4.11 The DSP will aid developers and future occupiers in managing:

- Location of loading;
- Delivery timing;
- Routing;
- Vehicular type and vehicular control measures;
- Freight consolidation;
- Other control measures;
- Specific considerations according to land use, where applicable; and
- Monitoring.

4.12 All DSPs must be structured around the themes/issues identified in 4.11 above.

Location of loading facilities

4.13 Consideration to the location of loading facilities should be given to all developments, both those with on-site loading provision and those that propose to use the existing on-street loading provision.

4.14 Developments with dedicated onsite loading facilities must document in the DSP that these facilities are/will be used for servicing and deliveries as opposed to using the public highway, unless agreed otherwise by the Council at the planning application stage.

4.15 Where a development does not have access to onsite loading facilities, the DSP should clearly state where proposed deliveries will occur, including details of all existing kerbside loading restrictions within the immediate vicinity.

4.16 Further consideration should be given to the cumulative impact from deliveries to nearby developments. Where the proposed loading may adversely affect the existing servicing arrangements of nearby occupiers, the DSP should state the way in which conflict between deliveries will be minimised and any mitigation required.

4.17 When considering the location of the on-street loading, applicants should try to avoid, where possible, high streets or busy main roads where loading could be carried out from the rear or a side road as an alternative, or within close proximity to bus stops and junctions. Loading must also not prevent the safe operation of highways infrastructure such as cycle lanes and crossing facilities.

4.18 Where it has been agreed with the Council that out of hours deliveries may take place, the loading location must still be given consideration, particularly when in close proximity to residential properties. The DSP must clearly set out measures aimed to minimise noise for out of hours deliveries.

Delivery timing

4.19 The DSP must set out details of expected delivery times. Where deliveries can only be made during daytime working hours, these should occur off-peak, i.e. avoiding between 7am and 10am and 4pm and 7pm. In areas where lunchtime footfall is particularly high, deliveries between 12pm and 2pm should also be avoided.

4.20 For deliveries made outside of the hours of 7am to 8:30pm, the Council expects that all operators will be subject to an out of hours delivery agreement. The agreement should form part of the DSP which will state the commitment from the operator to minimise noise, setting out the proposed measures in which this

will be achieved. This may be where, for example, the operator operates a quiet approach to deliveries through the use of quiet vehicles and practices.

4.21 In order to avoid unnecessary congestion, further consideration must be given to the scheduling of the deliveries, in particular where a site is expected to receive several deliveries throughout the day. In these instances, the DSP should set out details of a booking system which should be used to evenly distribute deliveries throughout the day, avoiding peak times and conflicts from concurrent deliveries.

4.22 Further consideration should be given to the cumulative impact from deliveries to nearby developments. Where the proposed loading may adversely affect the existing servicing arrangements of nearby occupiers, the DSP should state the way in which conflict between deliveries will be minimised and any mitigation required. Such mitigation may include retiming of deliveries or the creation of a central booking system for multiple occupiers.

Routing for Heavy Goods Vehicles (HGVs)

4.23 Where a site requires servicing or deliveries by HGVs (vehicles over 3.5 tonnes), the DSP must include details of the proposed route between the site and the Transport for London Road Network (TLRN). The DSP should consider the most efficient vehicle route which should also:

- Prioritise routes according to our road hierarchy; and
- Avoid residential areas and areas of high pedestrian or cycle use where possible.

4.24 Overnight deliveries using vehicles over 18 tonnes may be subject to routing restrictions set out in the London Lorry Control Scheme which aims to minimise lorry noise in residential areas. Routing should also consider any impacts of major construction sites and/or long-term highways works where applicable.

Vehicle type and vehicle control measures

4.25 Consideration should be given to the type of vehicle used to carry out deliveries or servicing. The DSP must clearly demonstrate what type of vehicles are expected to serve the development and any control measures they may have. The Council encourages the appointment of suppliers with:

- Vehicle fleets consisting of zero or low emission vehicles;
- Fleet Operator Recognition Scheme (FORS) accreditation, or an equivalent scheme accreditation, which promotes best practice in vehicle management and driver training;

- Direct Vision HGVs which provide the driver with an improved field of vision;
- Engine idling policies to reduce noise and limit effects on air quality;
- A quiet approach to deliveries through the use of quiet vehicles and practices, in particular when delivering out of hours. Further information can be found on the FORS website for quiet equipment;
- Vehicles with engines rated to Euro VI as a minimum; and
- The most efficient number and/or size of vehicles such that vehicle numbers/trips are minimised and appropriate vehicle sizes are used.

4.26 The DSP should also include measures that ensure the safe movement of all road users (particularly vulnerable road users), demonstrating that proposals would not adversely affect other road users.

Freight consolidation

4.27 As part of the DSP, the Council encourages the use of freight consolidation centres where separate deliveries are received to a central point outside or at accessible locations in the borough and then delivered in bulk using a single delivery to the final destination. Given the difficulties of reaching Camden's central and inner London location, freight consolidation can provide genuine opportunities for efficient deliveries and servicing.

4.28 Equally, adopting an area based approach to freight management can also lead to a significant reduction in freight traffic. This has been achieved by various Business Improvement Districts (BIDs) around London. For example, the West End BID has achieved a 94% reduction in waste vehicle trips in Bond Street, Regent Street and Oxford Street, with an associated 30% saving in costs to businesses. The Northbank BID has achieved similar results in Villiers Street, with associated improvements to the general street environment.

4.29 As part of this, the use of 'micro-consolidation' in which 'last mile' deliveries are made by foot or cycle should also be considered. Further information on reducing deliveries and servicing visits is available on TfL's website.

4.30 Where the use of consolidation centres are proposed, the DSP should include details of the:

- Vehicle type to be used;
- Route between the consolidation centre and the site; and
- System of monitoring to measure the effectiveness of the consolidation arrangements.

Other control measures

4.31 Control measures, such as those that will improve the efficiency and reduce the impact of servicing vehicles, will need to be considered as part of the DSP. Examples of measures typically include:

- Smart or joint procurement with other local businesses;
- Making arrangements so that the same vehicles making deliveries are reloaded with items to be delivered from the site;
- A commitment to using cleaner fuel vehicles, and more sustainable modes of transport such as cargo bikes;
- Managing waste and coordinating the removal of waste with nearby occupiers;
- Incorporating measures to discourage or prohibit personal deliveries to a development such as providing membership to off-site parcel drop-off services; and/or
- Where no onsite loading is available, making arrangements to share storage space with neighbouring properties to facilitate bulk deliveries.

Specific considerations according to land use

4.32 This section outlines additional measures according to different land uses, of which relevant sections must be included in the DSP in addition to the mandatory sections outlined above. The DSP should consider the site specific measures outlined below for each land use and where a development comprises of more than one use, a combination of the measures should be considered.

Office developments

4.33 The prohibition of personal deliveries to offices, combined with an offer of click and collect services to employees is one way of reducing the number of vehicles serving an office, and can significantly reduce the impact on the road network.

4.34 The re-timing of some deliveries should be possible within a small office development. If a development is not to be staffed overnight or at weekends, on-site secure storage, or arrangements with nearby businesses to accommodate out of hours deliveries, may be feasible in order to reduce daytime impact on the network.

4.35 As outlined above, consideration should be given to the consolidation of deliveries, in particular to large office developments (generally those larger than 2,500sqm). Smaller office developments should also strongly consider a voluntary code, mandating the consolidation of inbound goods to reduce the

impact of the development and demonstrate a commitment to minimising freight movements. This consolidation regime should be enforced though a robust booking and monitoring system that can demonstrate the number of vehicle trips avoided as a result of the consolidation. If this is not required as a planning condition, a voluntary cap on the number of delivery vehicles each day is encouraged.

Multi-tenanted buildings, student accommodation and HMOs

4.36 Residential developments with multiple units or houses of multiple occupancy (HMOs) are likely to generate more delivery and servicing trips than those of single occupancy. As above, residents should be encouraged to deliver to a central hub rather than receive personal deliveries to an individual address, details of which should be linked to the Travel Plan where applicable.

4.37 Buildings with multiple tenants should also develop an occupier forum to co-ordinate joint procurement, waste collection and collaborative working, details of which should be set out within the DSP.

4.38 For student accommodation, the DSP should also address the impact of arrivals and departures at the beginning and end of terms, staggering activity using a booking system to avoid undue impact on the highway network and disturbance to adjacent occupiers.

General retail

4.39 Management of freight movements in retail developments should focus on the consolidation of goods into the store and waste/returns from the store, ensuring that as few movements as possible are required in order to allow the business to operate.

4.40 Developments with sufficient storage space can reduce the requirement for regular deliveries. Ensuring that vehicles used for deliveries are also loaded with returns or waste, where appropriate, maximises efficiency and reduces empty vehicle mileage, minimising the development's impact on the network.

4.41 As noted earlier, deliveries made to retail units on high streets or busy roads should be undertaken on side roads or via a rear entrance if there is access.

4.42 Retail can benefit significantly from out-of-hours deliveries where on-street loading restrictions may not apply, or be less stringent. Reference to quiet deliveries (as noted in paragraph 4.26 above) should also be made where possible.

Food and drink retail/pubs and restaurants

4.43 Food and drink establishments are often key generators of demand for servicing and so we expect a detailed DSP clearly setting out the measures outline in this document.

4.44 Many of the measures appropriate for general retail are also applicable to the food and drink sector. For an organisation with several locations in close proximity, the DSP should demonstrate that deliveries to those locations are efficient, and make good use of consolidation to minimise freight movements. Deliveries to food and drink establishments can often be noisy in nature, and so particular attention must be taken with regards to quiet deliveries as set out in paragraph 4.26 above.

4.45 Smaller or independent food and drink retailers not benefitting from a large procurement network may use many suppliers for different items. In these instances, joint procurement techniques such as those employed by BIDs in central London can increase co-operation between local businesses and may offer the best way of reducing the number of freight movements without impacting on business operations.

Hotels and hospitality

4.46 As with food and drink establishments, hotels are also key generators of demand for servicing, thus developments of this nature are required to submit a detailed DSP clearly outlining the measures set out in this section.

4.47 Many of the measures appropriate to reducing the impact of food establishments, such as out of hours deliveries, are also applicable to the delivery and servicing of hotels, meeting venues etc.

4.48 Joint procurement of common services, such as linen delivery or dry cleaning, is particularly encouraged for hotels and hostels.

Monitoring

4.49 Ongoing monitoring of the DSP will be required to ensure that the development is in accordance with the planning permission for the site. DSP monitoring will take place as part of the Travel Plan monitoring, normally in years 1, 3 and 5 post completion of the development. Monitoring for sites without a Travel Plan will need to be specified as part of the DSP.

4.50 The Council will secure funding at the planning stage as part of a development's S106 agreement to cover the cost of ongoing DSP monitoring.

Design of loading facilities for waste collection

4.51 Developments that have demonstrated a significant movement of goods or materials by road in the Transport Assessment (typically major developments or those where the floor area exceeds the thresholds set out in Appendix A of this guidance) will be expected to accommodate goods and service vehicles on site. This also includes provision for waste collection vehicles should it be demonstrated that they require onsite access (see CPG: Waste for information). Accommodating servicing and delivery vehicles on-site should also take into account the guidance on vehicular access in Section 7 of this CPG.

Further Information

4.52 Further guidance and other best practice for deliveries and servicing can be found on TfL's website which includes a toolkit that seeks to manage the efficiency of servicing vehicles in London. Applicants should take particular note of the following documents:

- Personal deliveries guidance; and
- TfL's Code of practice.

5. Parking and car-free development

KEY MESSAGES

- The Camden Local Plan 2017 extends car-free development to the whole of the Borough.
- Legal agreements will be used to maintain car-free and car-capped development over the lifetime of a scheme.

5.1 This section explains how the Council will implement Local Plan Policy T2 and sets out:

- What the Council expects from car-free developments including what car-free development is and where it is sought;
- The mechanisms that are needed to secure it;
- Where it may be appropriate for the Council to refuse developments that are not car-free;
- How any exceptions to the car-free approach will be applied such as:
  - Parking provision for redevelopment and existing occupiers;
  - Meeting the parking needs of disabled people and other essential users; and
- Parking at schools.

5.2 Our car-free policy makes an important contribution towards the Council's strategic aims relating to transport, as well as wider responsibilities such as public health. These include reducing congestion, promoting sustainable transport, improving air quality, reducing carbon emissions and supporting healthy, active sustainable lifestyles. It also enables land to be used more efficiently. Over the duration of the Plan period, the Council will therefore seek to capitalise on opportunities arising from development, to achieve a net reduction in its overall stock of parking spaces throughout the borough.

What is car-free development?

5.3 Car-free development means that no parking spaces are provided by or associated with the development other than those reserved for disabled people where necessary and businesses/services reliant upon parking where this is integral to the nature, operational and/or servicing requirements (e.g. emergency services or builders merchants may require operational loading

bays). In addition, current and future occupiers are also not issued on-street parking permits.

5.4 Throughout this section, the term 'parking provision' should be considered to mean both on-site and on-street parking, as the guidance is relevant to both dedicated on-site parking facilities and on-street parking permits/dedicated bays.

5.5 The term 'car-free' should be considered to relate to cars and other types of motor vehicles such as goods vehicles and motorcycles.

When will the Council seek car-free development?

5.6 The Council will expect all new residential development to be car-free, including redevelopments (and changes of use) with new occupiers. The car-free policy applies across the whole borough, regardless of public transport accessibility level (PTAL) ratings. Where dwellings are created as part of an amalgamation, sub-division or an extension of an existing development these will be expected to be car free.

5.7 All new non-residential developments will also be expected to be car free in accordance with Local Plan Policy T2, including:

- The redevelopment and/or conversions of existing sites with new occupiers; and
- Extensions where the proposed new floor space leads to an increase in occupancy.

5.8 Where proposals result in a less intense use of the site, the Council will also seek car-free development and a reduction in the parking provision. This may occur for example where a residential development with returning occupiers and associated parking proposes to reduce the number of units on site, amalgamating multiple units into one. Another example is an existing office which is being reduced in size as part of a redevelopment to accommodate alternative uses such as retail.

5.9 The term 'car-free' will apply to all developments subject to Policy T2, even those that have demonstrated, to the Council's satisfaction, a need for associated parking provision for disabled use and/or that is integral to the nature of a business. This means that other than the parking provision for essential users, the rest of the development is car-free and future occupiers will not be eligible for on-street parking permits.

5.10 Applications subject to Policy T2 that propose additional or new non-essential parking provision will not be acceptable. In general, any (existing) parking

provision associated with the previous development will not be retained. However in certain circumstances, outlined below, the retention of existing parking provision for existing occupiers returning to a redevelopment may be considered.

Redevelopments and parking provision for existing occupiers

5.11 The Council will require any development to be 100% car-free if the development is to have new occupiers, which is assumed to be the case for all new development. Car-free developments are secured by Section 106 agreements combined with Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 and Section 1(1) of the Localism Act 2011. We are using these Acts in addition to Section 106 of the Town and Country Planning Act (rather than instead of it). These legal agreements where appropriate (e.g. residential development) incorporate the Council's standard planning obligation designating all units on-site as "car-free" housing.

5.12 In accordance with Local Plan Policy T2, all new developments are required to be car-free. Therefore all homes in new developments must be car-free, not just additional dwellings. Exceptionally, where existing occupiers are to return to a property after it has been redeveloped, we will consider allowing the reprovision of the parking available to them (so the redevelopment does not cause people to lose parking already available on that site prior to its redevelopment), where it is demonstrated to the Council's satisfaction that the existing occupier will return to the property as their principal home. In such cases, the Council will consider temporarily relaxing the car-free requirement in respect of that dwelling for the period over which that occupant resides at the property. A mechanism set out in the Section 106 agreement will require returning owner-occupiers to provide evidence that they intend to continue to occupy their home as their principal residence before any temporary relaxation of car-free status can take place. Such properties would be car-free to future occupiers who would be ineligible for on-street parking permits.

5.13 For housing estate regeneration projects in Camden, involving the reconfiguration of the estate and the relocation of existing housing, the Council will expect a significant reduction of parking spaces and not full reprovision. This is in line with London Plan Policy T6 (L) which states: "Where sites are redeveloped, parking provision should reflect the current approach and not be re-provided at previous levels". Camden's car-free approach also recognises that residents in the Borough have good access to sustainable modes of transport.

5.14 However, the retention of existing parking provisions on housing estates may be considered if it is demonstrated that the new homes are for existing occupiers with existing parking rights. Where reprovision of car parking spaces is proposed, the Council will expect the applicant to undertake an audit of existing provision for residents on the estate prior to decant to justify the overall quantum of spaces as part of the regeneration proposals. This may include demonstration of a genuine need for reprovision, for instance where a vehicle is required for employment purposes. The Council may also request the applicant to undertake observational surveys to help validate the information being provided. The applicant should fully consider the potential for introducing/increasing the proportion of car club/shared spaces as part of any reprovision, the ability to promote active modes and public transport use and the potential repurposing of parking spaces in response to changing requirements, including technological change.

5.15 Where re-provision is necessary, the Council will require applicants to provide a Car Parking Management and Reduction Plan, a document that will help to manage, monitor and seek to reduce the amount of on-site car parking by means of repurposing. For more details on Car Parking Management and Reduction, see Section 6 of this guidance.

5.16 For developments that remove car parking and no longer require a vehicular crossover adjacent to the site, a highways financial contribution will be sought from by Council and secured by a combined Section 106 and Section 278 agreement, where the Council's contractors will remove the redundant crossover and reinstate the pedestrian footway. Further information on this is included in Sections 2 and 7 of this CPG.

Disabled parking provision

5.17 As noted in Local Plan Policy T2, criterion b) i) the Council will seek to limit on-site parking to spaces designated for disabled people where these are needed.

5.18 For residential developments that demonstrate a requirement for parking spaces designated for disabled people, the quantity of parking will be as set out in the latest version of the Mayor's London Plan.

5.19 For all major developments the Council will expect that disabled car parking is accommodated on-site. For further guidance on the design and layout of these spaces see Section 6 of this CPG.

5.20 For all minor developments, the Council will aim to accommodate disabled parking provision on-street. As Blue Badge / Green Badge holders are able to use parking spaces in Controlled Parking Zones without a parking permit, providing disabled parking provision on-street may be considered acceptable if

the on-street provision is adequate (details of which should be set out within a Transport Assessment, see Section 2 of this CPG). In delivering disabled parking on-street, it is expected that developers will identify existing supply and demand by carrying out parking beat surveys. Surveys should be based on a realistic assessment of accessibility for people with disabilities (in any case the maximum distance Blue Badge holders should be expected to travel is 50 metres from the entrance to the site). Developers would be required to cover the Councils costs for any amendments to the on-street parking situation required to accommodate extra provision. Parking beat surveys need to be undertaken during the school term and not during local school holidays.

5.21 Where there are no opportunities to meet the standards through provision of Blue Badge / Green Badge opportunities within parking bays on-street or additional on-street disabled bays, the Council will consider proposals to incorporate the disabled parking provision on-site. Details of all on-site parking must be clearly demonstrated in the Car Parking Management and Reduction Plan. Further information on this can be found in Section 6 of this CPG.

5.22 The amount of disabled parking should be in accordance with the London Plan. The total disabled parking requirement must be clearly set out in a supporting Transport Assessment.

Essential parking provision for non-residential developments

5.23 For non-residential development, the Council will consider some parking provision where it is demonstrated that this is essential to the use, operation and/or servicing of the use, business or service. Examples of this could include:

- Parking spaces for staff with a recognised disability;
- Parking for vehicles used by emergency services (e.g. ambulances);
- Operational parking for B1c light industrial uses;
- Operational parking for B2 General industrial uses;
- Operational parking for B8 storage and distribution centres; and
- Operational parking for other unclassified uses of similar nature to those above classed as Sui Generis (e.g. depots and building merchants).

5.24 General parking for staff and visitors is not considered to be essential to the use, operation and/or servicing of the use, business or service and will not be permitted.

5.25 The Council will expect all essential parking requirements to be clearly set out in a supporting Transport Assessment and agreed at an early stage with officers. Where essential on-site car parking is agreed, a Car Parking

Management and Reduction Plan will be required (see Section 6 of this CPG for more details).

Electric vehicles

5.26 Where a need for new parking is agreed, the Council will require the provision of bays to include electric vehicle charging points (EVCPs) in accordance with the standards in the London Plan. For redevelopments where existing parking is to be retained, we will expect at least 20 percent of car parking spaces to be fitted with active charging facilities and will encourage passive provision for all remaining spaces. Active spaces are connected and ready to use, whereas passive provision requires the capacity for connection to the local electricity network as well as cabling to parking spaces. The Council supports the provision of rapid charging facilities.

5.27 Details of the provision of electric vehicle charging points must be included in a Car Parking Management and Reduction Plan which will be secured by a legal agreement, either incorporated in the Travel Plan or as a standalone document if a Travel Plan is not required (see Section 2 for further information).

5.28 The provision and ongoing retention of electric vehicle charging points within sites will be secured by planning conditions.

Car-free planning obligations in legal agreements

5.29 In order to maintain car-free development over the lifetime of a scheme, the developer will be required to enter into a legal agreement with the Council (see paragraph 5.11 of this CPG), which would permanently remove the entitlement to occupiers (residents or staff) for on-street parking permits.

Parking at schools

5.30 As noted in paragraph 4.33 of the Camden Local Plan, the Council has identified high levels of congestion and deterioration in air quality associated with the 'school run', particularly in the Hampstead and Belsize Park areas (Belsize, Frognal and Fitzjohns and Hampstead wards). To avoid exacerbating these issues, the Council will resist proposals for new schools or development that would increase the number of pupils/students at existing schools, unless it can be demonstrated that traffic movements will not increase.

5.31 To discourage staff, parents or pupils driving to a school, applicants will be expected to provide evidence confirming that no parking, other than provision required for disabled or operational use, is provided on-site or on-street. As for all non-residential development, staff and visitor parking at schools is also considered as non-essential and will not be acceptable.

5.32 Air quality data may also be sought consistent with Policy CC4 and the London Plan. Furthermore, a robust School Travel Plan should be submitted to the Council setting out the actions to reduce journeys made to and from the school using private vehicles and set out a list of measures that will encourage parents, pupils and staff to travel by active modes and public transport as an alternative to private motor vehicles. Further information on School Travel Plans can be found in Section 2 of this CPG.

5.33 In other areas of the borough, the Council will apply Policy T2 consistent with the approaches to non-residential developments as set out above.

5.34 The Council supports the redevelopment of existing car parks for alternative uses. This could for example allow for an existing school to be extended. Where the principle to expand an existing school is agreed, we will therefore encourage the re-use of the school's existing parking land to facilitate the development.

Refuse and recycling collections

5.35 Car-free developments need to be designed to accommodate refuse and recycling collections in a safe and efficient manner. Further information is provided in Camden Planning Guidance document CPG Waste.

Redevelopments on car parks in town centres

5.36 In accordance with Policy T2 of the Camden Local Plan, all new development will be required to be car-free except for any requirements for essential parking provision. The Council acknowledges that existing car parking spaces can help to support the functions of town centres. The Council will therefore consider the retention of the existing parking provision where a robust case for this can be made. Developers will be expected to provide evidence to justify the need to retain parking provision for existing uses. This would typically involve traffic surveys and parking supply/demand surveys. The Council will seek a reduction in on-site parking provision and a reduction in motor vehicle trips associated with such developments. Any developments which would result in an overall increase in on-site parking provision and/or motor vehicle trips to and from the site will not be supported. An example of this would be where a

developer wants to retain all existing parking for existing uses while also needing to provide additional disabled parking and operational parking for new uses.

6. Car Parking Management and Reduction

KEY MESSAGES

- Developments with associated car parking will be required to submit a Car Parking Management and Reduction Plan.
- Applicants must demonstrate how parking will be managed, monitored and enforced, and provide details as to how the car parking can be repurposed in the future.

6.1 Camden's car-free policy means that in most circumstances car parking will not be permitted by the Council as part of the proposed scheme. In instances where car parking has been agreed however, such as for essential uses or the retention of existing provision as defined in Section 5 of this CPG, management of the car parking will be required. This section assists applicants that may have to provide on-site car parking spaces and/or vehicular access for essential users (e.g. residents and staff with a recognised disability). The guidance is also applicable for developments with existing car parking provision, where the Council will secure a plan to reduce the quantity of car parking spaces by removal and conversion to more appropriate uses.

6.2 This guidance relates to Camden Local Plan Policy T2, (Parking and car-free development), and should be read in conjunction with the car-free guidance and vehicular access guidance set out in sections 5 and 7 of this CPG. Reference should also be made to the most recent version of the Mayor's London Plan.

6.3 The following guidance includes details on:

- When and how we seek the management of car parking (through a Car Parking Management and Reduction Plan);
- The repurposing and redevelopment of existing car parks for alternative uses;
- Design and layout of on-site parking;
- Vehicular access into a site; and
- Electric vehicle charging points.

When does this apply?

6.4 This guidance applies to planning applications that have demonstrated to the Council's satisfaction a need for on-site car parking and vehicular access for essential uses, subject to Policy T2 of Camden's Local Plan. The quantity of

car parking spaces must not exceed those in the Mayor's latest London Plan Policies (see Section 5 of this CPG for further details).

6.5 Where retention of existing car parking has been deemed as acceptable, applicants will be expected to follow the guidelines set out in this section to help manage the future use of on-site car parking.

6.6 This guidance is not applicable to those proposals where associated car parking is to be accommodated on-street. Whilst Car Parking Management and Reduction Plans are not expected for such proposals, as discussed in Section 5 of this CPG, applicants will still be required to provide sufficient rationale to justify the provision of on-street parking spaces.

Car Parking Management and Reduction Plans

6.7 Car Parking Management and Reduction Plans are required where a development has associated on-site car parking spaces. Details regarding the management of both new and existing parking is needed for the Council to ensure the most efficient and sustainable use of space within a site.

6.8 In line with Local Plan Policies T1 and T2, the Council will seek to encourage and prioritise travel by active modes of transport and public transport over the private car and support the redevelopment of existing car parking spaces for alternative and more appropriate uses. To deliver this, any car parking associated with a development must be managed effectively and repurposed where possible.

6.9 Car Parking Management and Reduction Plans can take various forms depending upon the level of detail required. All Plans, irrespective of the size of development it relates to, must include sections detailing the following:

- Design and layout of existing or proposed car parking;
- How the site is accessed by vehicles and the interaction with vulnerable road users;
- Details of measures to reduce car use such as Car Clubs or cargo bike parking;
- Details of electric vehicle charging points;
- How the spaces are managed, the usage is monitored and the wrongful use of spaces is enforced; and
- A strategy to reduce the number of on-site car parking spaces in the future by repurposing the spaces for alternative uses.

6.10 The plan should detail the location and layout of spaces, and identify which spaces are allocated for electric vehicle charging points and any car club bays.

Further measures such as installing surface-mount or retractable ground anchors within the bays can help to accommodate cargo bikes and other non-standard cycles should occupants not wish to use the space for a car.

Figure 6.1 Example of retractable anchor - Broxapp

6.11 Plans should clearly demonstrate how spaces will be made available, managed, monitored and enforced. For disabled car parking, the Car Parking Management and Reduction Plan should demonstrate how users will be informed of the spaces, including details of who is eligible and how the spaces will be prioritised and allocated. Details must also include how unallocated spaces will be managed to prevent any unused disabled car parking being used for general parking.

6.12 In order to ensure the reduction in private car ownership and to support the growth of active travel, applicants will be expected to include details of the proposed repurposing of car parking spaces within the Car Parking Management and Reduction Plan. Details should include the quantity of spaces to be removed, how this process will be managed and what the proposed repurposing measure will provide. More information on repurposing car parking is included later in this section.

When to submit a Car Parking Management and Reduction Plan

6.13 A Car Parking Management and Reduction Plan should form part of a development's planning application. Details must be submitted at the planning application stage as a chapter within the Transport Assessment/Statement or as part of a Design and Access statement or Transport Note where this is not applicable.

6.14 In order to retain the measures set out to manage and reduce car parking, the Car Parking Management and Reduction Plan will form a section of the Travel Plan where targets for modal shift must reflect the interventions proposed. The

reduction targets should also be monitored in line with the Travel Plan's monitoring reports where results can be included within the monitoring reports submitted to the Council. For schemes where a Travel Plan is not required, a standalone Car Parking Management and Reduction Plan will be required.

6.15 As part of the Section 106 agreement the Council will request contact details of the individual/body managing the reduction plan. This may be the building's management company or, for developments that require a Travel Plan, the Travel Plan Coordinator and this would be incorporated into their role.

Dimensions and layout of car parking spaces

6.16 Parking spaces should be located in a way that does not prioritise vehicles over walking and cycling. There must be clear delineation between vulnerable road users and motor vehicles to ensure the safety of all road users. Parking should be on an even surface and access between the spaces and the principal entrance should be step-free.

6.17 Applicants should refer to the table below and Manual for Streets for the dimensions and layout of on-site car parking spaces.

Standard car parking space	2.4m wide by 4.8m deep.
On-site car parking space for use by disabled people	A standard parking bay plus 1200mm clear zone
Layout of car parking spaces	90° parking – aisles may be two-way • The minimum aisle width between the ends of spaces is 6.0m. 60° parking – aisles must be one-way • The minimum aisle width between the ends of spaces is 4.2m. 45° parking – aisles must be one-way • The minimum aisle width between the ends of spaces is 3.6m.

Disabled Parking

6.18 Dedicated car parking spaces for use by disabled people should be designated with appropriate markings and signs. These spaces should be located as close as possible to main pedestrian entrances and passenger lifts. There must be no obstruction (such as a raised kerb or heavy doors) between the parking spaces and the entrance to the building. In considering the appropriateness of distances to the furthest facility served by a dedicated parking space, the following guidelines will be taken into account:

Uncovered route	Less than 50m
Covered route (unenclosed or part enclosed)	Less than 100m
Completely enclosed route (unaffected by bad weather)	Less than 200m

6.19 For further information on the provision of disabled car parking see Section 5 of this CPG.

On-site Vehicular Access

6.20 For applications where onsite vehicular access has been agreed, all applications must demonstrate how the parking/servicing facilities are accessed by vehicles and the level of detail must include how vehicles entering and exiting the site are managed. All vehicles must enter and exit the site in a forward gear.

6.21 For more details regarding vehicular access, see Section 7 (Vehicular Access) of this CPG.

Electric vehicle charging points

6.22 Where onsite car parking has been agreed, applicants will be expected to provide infrastructure to support electric vehicle charging points (EVCPs) as per the Mayor's London Plan. At least 20 percent of car parking spaces should have active charging facilities and we would welcome passive provision for all remaining spaces. This includes charging facilities for disabled users and servicing vehicles. Applicants will be expected to meet any standards set out in future revisions to the London Plan.

6.23 Active spaces have charging points that are fully wired and ready to use. Passive provision requires cabling to parking spaces to enable simple installation and activation at a future date. There must also be capacity in the local electricity network supporting both the active and proposed passive EVCPs. Applicants are required to provide details of the breakdown of active and passive charging points within the Car Parking Management and Reduction Plan including information on how the spaces will be delivered and managed. If a Travel Plan has been secured, the activation of the charging points will also form part of the monitoring.

6.24 Developments that have demonstrated to the Council's satisfaction that parking for essential uses can be accommodated on-street, will still be expected to meet the Mayor's EVCP provision. In these instances, the Council may accept a payment in lieu to cover the cost of a traffic order for conversion of an on-street

car parking bay or for a Lamp Column Charing Point within close proximity of the development.

Repurposing and Redevelopment of Existing Car Parking

6.25 As per Local Plan Policy T2, we will seek the redevelopment of existing car parking for alternative uses. For developments with existing car parking, we will seek the repurposing of spaces, or the future repurposing of spaces, to help reduce private car usage, the details of which must be included in the Car Parking Management and Reduction Plan.

6.26 Proposals to replace car parking could include:

- Additional cycle parking, including provision for non-standard cycles;
- Cycle stations with basic maintenance equipment such as a stand, pump and tools;
- New outdoor amenity space;
- Creation of new residential dwellings
- Extensions to existing properties
- Alternative land uses such as a gym; and/or
- A designated car club bay.

6.27 Repurposing proposals will be secured in the Car Parking Management and Reduction Plan and will form part of the monitoring of a Travel Plan or as a standalone document if a Travel Plan is not required.

7. Vehicular Access and Crossovers

KEY MESSAGES

- Planning permission must be sought for works that create or alter an access onto a classified road.
- Highway Authority consent is required for any works affecting the public highway.
- The Council will not approve applications that would cause unacceptable parking pressure, add to existing parking problems or result in negative impacts on amenity.

7.1 This section gives guidance on designing developments to provide safe access and use by motor vehicles, ensuring that new means of access do not cause harm to the safety of other users of the development and the adjacent highway. It focuses on the Council's approach to planning applications that include new footway crossovers and new access routes to enable access from the public highway to properties and sites.

CROSSOVER

A dropped kerb or short ramp to permit vehicle access across a footway.

7.2 This section relates to Camden Local Plan Policy A1 which resists development that fails to adequately address transport impacts. It provides guidance on how proposals are judged in terms of:

- Impact on the highway network and on-street parking conditions;
- Visibility and sightlines for vehicles;
- Impact on the footway;
- Layout and dimensions for crossovers; and
- Mechanisms to prevent waiting on the highway for schemes that include controlled access points, lifts and ramps.

When does this apply?

7.3 This guidance applies to applications that involve a change in the way that a site is accessed from the highway. All works affecting the highway must have the consent from the local highway authority under the Highways Act (1980), which is in addition to planning permission granted by the planning authority.

HIGHWAY AUTHORITY

The Council is the Local Highway Authority for the majority of public roads in the Borough .Transport for London is responsible for roads on the Transport for London Road Network (also known as Red Routes). Some public roads in the Borough are privately maintained and the Council is not the Local Highway Authority. As an example, roads within Regent's Park are maintained by the Crown Estates Pavement Commission.

7.4 There are certain circumstances where planning permission may not be required for access to an existing paved area or garage where a Crossover Application granted under highway authority approval would suffice in its place. In this situation, Section 184 of the Highways Act (1980), allows an applicant to seek approval from the local highway authority (usually the Council) to construct a vehicular crossover to an existing development. This may be applicable when a development has an access:

- From a road that is not classified.;
- To a property that is not sub-divided into flats, and is occupied by a single household; and
- To a property not located within a conservation area.

7.5 Applicants should note that vehicular crossovers will **not** be acceptable where a development is:

- Subject to a car-free planning obligation;
- Where the installation of a crossover would result in the loss of on-street parking provision;
- Where the alterations to the boundary treatment would have a visually detrimental impact on the street; or
- Where there is a detrimental impact on amenity, such as felling of valuable trees.

7.6 It should also be noted that any work on Camden's public highway will be undertaken by the Council at the applicant's expense.

How should vehicle access be provided?

7.7 Access to a site by motor vehicles is gained by either driving over the footway using a crossover or 'continuous footway', or interrupting the footway by a new junction to create a level access direct from the carriageway. The Council will

decide on the appropriateness of crossovers and will seek adoption of new roads where appropriate.

CONTINUOUS FOOTWAY

An uninterrupted footway giving priority to pedestrians but allowing access to vehicles.

Impact on the highway network and on-street parking conditions

7.8 Camden Local Plan Policy A1 seeks to ensure that new connections to the highway network from developments do not cause harm to the existing network, to its users or the environment. Creation of new accesses on the highway must not negatively impact on highway safety, with a focus on vulnerable and disabled road users and their needs.

7.9 The Council will resist development that negatively impacts on existing on-street parking conditions and will not approve applications for planning permission (or for highways consent) that would cause or exacerbate unacceptable parking pressure or add to existing parking, waiting and loading problems. Information regarding the existing parking pressure can be acquired from the Council during the application process.

Visibility and sightlines for emerging vehicles

7.10 Vehicles joining the highway network need clear views of pedestrians, cyclists and other traffic, and users of the highway network need clear views of those joining it. Applications where sightlines are obstructed resulting in a detrimental impact on safety will be unacceptable. The Manual for Streets provides guidance on visibility requirements. The Council will expect applicants to submit a road safety audit report in support of any planning application involving the creation of a new or amended vehicular access to a site.

Layout and dimensions for footway crossovers

7.11 It is essential that footway crossovers do not harm pedestrian movement and that there is minimum footway width of 1.8 metres between the carriageway and the site boundary. Further information on pedestrian movement and TfL's Pedestrian Comfort Level assessment can be found in Section 9 of this guidance. Any changes to the public highway would need to be approved by the highway authority and implementation of crossovers where agreed will be undertaken by Camden's highways contractor at the expense of the developer.

7.12 It is important that new access points are not overly steep, in order to allow for safe and convenient access.

7.13 Where there are ramps into a site, for example to serve a basement car park, the Council will expect the following gradients:

- Vehicular ramps should be a maximum gradient of 10% (1:10); and
- For pedestrians, ramps should be a maximum gradient of 1:12, in line with the Disability Discrimination Act (DDA) requirements (although a gradient of 1:20 is preferred).

Level plans

7.14 In order to ensure that the thresholds of the proposed development tie in with the existing levels of the adjacent public highway, level plans will be required as part of any planning application where proposals seek to alter existing levels adjacent to the boundary with the public highway .

7.15 Where possible, the ground floor level of a development should be the same as the level of the adjacent highway, in order to avoid the provision of unnecessary steps, while allowing for water to runoff.

7.16 When level plans are required, drawings showing all existing and proposed threshold levels should be submitted. Where new thresholds are proposed, the developer must provide sufficient evidence setting out an appropriate mitigation strategy, demonstrating how the development will tie in with the public highway (e.g. design to amend the public highway). A Level Plans proforma can be found on the Council's website.

Preventing waiting on the highway: controlled access points, lifts and ramps

7.17 Sometimes it will be necessary to provide a limited amount of space for vehicles on a site or within the curtilage, with controls at the point of entry and/ or provision of vehicle space at a different level from the street, accessed by a vehicle ramp or lift.

CURTILAGE

The area of land adjacent to a development.

7.18 Where an application involves vehicles using a traffic signal, barrier or vehicle lift, an area should be provided within the site for vehicles to wait. This area should be sufficient to accommodate the maximum likely number of queuing

vehicles, without any obstruction to pedestrians and vehicles using the public highway. Proposals that involve vehicles waiting on the crossover/footway on the public highway will not be acceptable due to the impact this would have on road users.

7.19 Where a lift, ramp or other access is only available to one vehicle or direction of flow, there must be space at each end for exiting vehicles to pass those queuing to enter. Applicants will be required to demonstrate how the space required for waiting vehicles will be managed to prevent uncontrolled parking when the space is not in use, for example by retractable bollard for certain times of the day.

8. Cycling Facilities

KEY MESSAGES

- The Council will seek high quality cycle parking facilities for development, including redevelopments and in applications that change travel patterns and the travel profile or increase the numbers of people travelling to a site.
- Applicants must provide, as a minimum, the quantity of cycle parking spaces as set out in the London Plan; and
- Applicants will provide cycling facilities that are fully inclusive and accessible by step free access.

8.1 This section relates to Local Plan Policy T1 (Prioritising walking, cycling and public transport). It provides guidance on meeting Camden's and the Mayor of London's minimum cycle parking standards in an effective way so that cycle parking is convenient and secure, and encourages users of a development to cycle to and from the site.

8.2 Cycling is a sustainable means of travel and, with London's increasingly congested road network and overcrowded public transport systems, it is important to prioritise and encourage sustainable transport in Camden and the rest of London. Not only is travelling by cycle often more efficient and quicker, increasing activity levels by incorporating exercise into every day travel brings about physical and mental health benefits and promotes wellbeing.

8.3 A lack of facilities, such as parking, showers and lockers, can often pose a barrier to cycling. For this reason, Camden will seek provision for cyclists in appropriate schemes by implementing the minimum standards set out in this document.

8.4 The guidance in this section covers:

- The circumstances under which we require cycle parking;
- The quantity of cycle parking required;
- Accessible cycle parking for non-standard cycles, including those used by people with physical disabilities;
- Location of long and short stay cycle parking;
- Types of cycle parking;
- Door openings on route to cycle parking; and
- Supporting facilities.

When does this apply?

8.5 This guidance applies to applications that change the way in which people access a site, either in the profile of trips and/or in the numbers of people traveling to and from a development. Examples of instances when these occur might be where an application involves:

- The creation of one or more dwellings;
- The creation of new non-residential properties:
- A change of use leading to more intensive occupation of the site/building;
- Extensions to existing developments which are likely to generate an increase to the demand for people to cycle to the site (as set out in the Transport Assessment and Travel Plan); or
- Mitigation required to reduce the impact on the existing transport network.

How do we implement our cycle parking standards?

8.6 As stated in the Local Plan Policy T1, the Council will expect developments to provide, as a minimum, the number of cycle parking spaces as set out in the London Plan. The Council will also seek an additional 20% of spaces over and above the London Plan standard to support the expected future growth of cycling for those that live and work in Camden. The Mayor of London has published 'London Cycling Design Standards' – applicants should in particular have regard to the recommended space requirements set out in Figure 8.1 and the advice to applicants on making the most efficient use of space in paragraph 8.2.3.

8.7 Where a development crosses the thresholds set out in the London Plan, requirements apply to the entire floorspace and not only the floorspace above the threshold. For example, at a new food retail development, if from a threshold of 100 sqm it is required to provide one long-stay cycle parking space per 175 sqm gross external area (GEA), this means that no requirement applies to a facility of, e.g. 50 sqm, but two long-stay spaces are required for a facility of 350 sqm.

8.8 Thresholds are generally given as a gross external area (GEA) or number of bedrooms, relating to the development as a whole. The standards are not intended to be applied separately to individual units where a development is subdivided into smaller units, for example 1,000 sqm of office space sub-divided into 10 offices.

8.9 For mixed-use developments where the floor area of individual uses falls below the thresholds set out in the London Plan, the Council will expect applicants to consider the cumulative impact of all of the uses and thus the Council will seek cycle parking spaces as part of the wider development. This may occur, for example, when a development consists of a food retail unit of 90 sqm and a restaurant of 85 sqm. If policy requires each of the units to provide one long-stay cycle parking space per 175 sqm, but from a threshold of 100 sqm, the Council would seek at least one space based on the cumulative requirement.

8.10 For developments involving nurseries and primary schools, a proportion of spaces will be supported where this offers dedicated long-stay parking for non-motorised scooters.

8.11 Details of all cycle parking and associated facilities must be submitted at the pre-application stage and the full application stage in order for the Council to fully assess the transport implications of the proposals. Planning Conditions will be used to secure the provision and ongoing retention of facilities.

Accessible cycle parking facilities for non-standard cycles

8.12 The Council will seek to secure cycle parking that is accessible for all types of cycle including for disabled people or those using non-standard cycles. We encourage the use of non-standard cycles as they enable all types of users to cycle, including disabled people who can often find cycling on adaptive cycles easier than walking. Non-standard cycles are generally larger than standard cycles. The most common types include hand-cycles, tricycles, tandems and cargo bikes.

8.13 Cycle parking for non-standard cycles will be sought for all applications subject to Policy T1 in line with the standards set out in the London Plan. The London

Plan together with the London Cycling Design Standards require that at least 5% of the total number of cycle parking facilities are allocated for non-standard cycles. For larger developments or developments that are likely to generate a higher demand for non-standard cycle parking, such as but not limited to, supermarkets or food retail units with cargo bike deliveries, the Council will encourage that more than 5% of the cycle parking is allocated for use by non-standard cycles.

Where should the facilities be located?

8.14 Well located and secure cycle parking facilities, both at the start and destination of journeys, are a key factor in encouraging people to travel by cycle. Inaccessible cycle parking and a lack of supporting facilities, such as showers and lockers, can make cycling unappealing and, at times, impossible.

8.15 Cycle parking should be provided off-street, within the boundary of the site and close to the site entrance. Cycle parking needs to be accessible (in that everyone who uses a cycle can easily store and remove it from the cycle parking) and secure (in that both wheels and the frame can easily be locked to the stand). Security is a critical concern and careful consideration must be given to the location, design, enclosure and surveillance of all cycle parking.

8.16 The route to cycle parking from street level must be step free. If level access is unachievable, the cycle parking must be accessible via a ramp or a lift that is adequate in size to accommodate a cycle and its user. Lifts should measure a minimum of 2m x 2m, although where many users are likely to arrive at a similar time, for example at a large office development, lifts will not be an acceptable option, as convenient access would be compromised.

8.17 We will expect developments to cater for both long and short stay cycle users in separate cycle parking facilities. Long stay cycle parking should not be located in the short stay cycle store and vice versa because there are different security and location requirements for the two types of store. This is provided in more detail below.

8.18 It is important that all routes to cycle parking are well signposted and details are included in a Travel Plan where one is required.

8.19 Where existing cycling facilities are underused or of poor quality, the Council will seek that they are relocated and/or upgraded if necessary.

Long Stay Cycle Parking Facilities

8.20 The Council will secure the location of all long stay cycle parking (intended for stays of over an hour) to be within 50 metres of the building entrance. If the site

has on-site vehicular access and cycles share the route with motor vehicles, the route to the cycle parking must be clearly delineated and proposals must demonstrate that cyclists are safely accommodated.

8.21 Long stay cycle parking should be provided within the building, via an entrance that is overlooked, well lit and with secure access. Where this is not possible, for example for staff and pupil cycle parking at schools, the Council may consider external cycle parking if the development is secure and if the parking is fully protected from the weather.

8.22 For developments that require long stay cycle parking for staff, the Council will expect supporting facilities such as lockers, changing facilities, a drying room and showers to be provided. These should be located in such a way that is convenient and within close proximity to the cycle parking facilities. In addition, other basic cycle maintenance facilities, such as a pump and a cycle stand, would be welcomed. The provision and ongoing retention of supporting facilities will be secured as a planning condition which will be set out/specified in the Section 106 legal agreement for Travel Plans if applicable.

8.23 The Council will expect resident cycle parking to be located internally and where possible, via a secure entrance that is well lit and is overlooked. For larger developments, clusters of cycle stores are welcomed, although the Council may secure individual stores if, for example, the existing structure restricts the creation of a communal cycle store. For developments such as a new studio or a two bed flat, it is generally acceptable to include cycle parking within the individual unit (space permitting). The space required to accommodate cycles must however be in addition to the residential space standards set out in the London Plan and should be located close to the entrance.

8.24 The use of existing on-street facilities, such as ‘Sheffield’ stands on the public highway, will not be considered as these do not provide adequate security for long stay parking and this would reduce capacity for short stay parking.

8.25 Where it is has been demonstrated to the Council’s satisfaction that it is not possible to provide long stay cycle parking within a small development, such as conversion of a first floor residential property with no step-free access, the Council may consider, as a last resort, a financial contribution in lieu of long stay parking. This contribution will assist the Council in providing more long stay cycle parking (e.g. Bike Hangars) on the public highway and will be secured via a Section 106 legal agreement.

Short Stay Cycle Parking Facilities

8.26 Short stay cycle parking must be located within the curtilage of a development and must not be located on the public highway.

8.27 Parking for visitors should be clearly visible or clearly signed from the public highway. The cycle parking should be sited within 15 metres of a building entrance, or within 25 metres for larger mix-use developments where frequent surveillance is possible. In some circumstances it may also be appropriate to install CCTV, for example where the level of natural surveillance is inadequate.

8.28 Where it is has been demonstrated to the Council's satisfaction that it is not possible to provide short stay cycle parking within a small development, for instances such as redevelopments or extension applications that do not have an existing forecourt, the Council may consider a financial contribution in lieu of short stay parking. This contribution will assist the Council in providing more cycle parking on the public highway (i.e. CaMden M' stands) and will be secured via a Section 106 legal agreement.

Design and Layout of Facilities

Type of Stand

8.29 The Council requires the use of either CaMden M or Sheffield stands for the provision of off-street cycle parking as they meet the requirements in terms of accessibility and security for all types of cycle, provided they are laid out correctly.

8.30 We are willing to consider other forms of cycle parking, however proposals must meet our accessibility and security requirements and enable the frame and both wheels to be locked to the stand. Designs that require cycles to be lifted into place such as vertical and semi-vertical stands will not generally be supported because not all users are physically able to lift their cycle, and these facilities often do not provide sufficient space or locking capabilities.

Figure 8.1 Example of a 'CaMden M' stand - Broxapp

8.31 It is recognised that alternative options, such as two-tier cycle racks, can often accommodate more cycle parking within a smaller area than 'CaMden M' or 'Sheffield' cycle stands. Whilst two-tier racks are not considered as an appropriate alternative for all cycle parking, as half of the stands require an element of lifting a cycle onto the top rack, consideration will be given to a proportion of the provision being provided as ~~a~~ two-tier racks. This may be

appropriate, for example, in a large office redevelopment where there is limited space.

8.32 Other cycle stands, such as 'half height' Sheffield stands or a regular Sheffield stand with a tapping rail, is recommended by the Council. This allows the frame of non-standard cycles, to be locked to the stand.

8.33 It may be appropriate to install surface-mounted or retractable ground anchors, which can be easily used by larger, freestanding cycles. The Council may consider this type of facility alongside other security measures in place, for example, if located in a locked cycle store with single or limited access, or where CCTV is (or will be) installed.

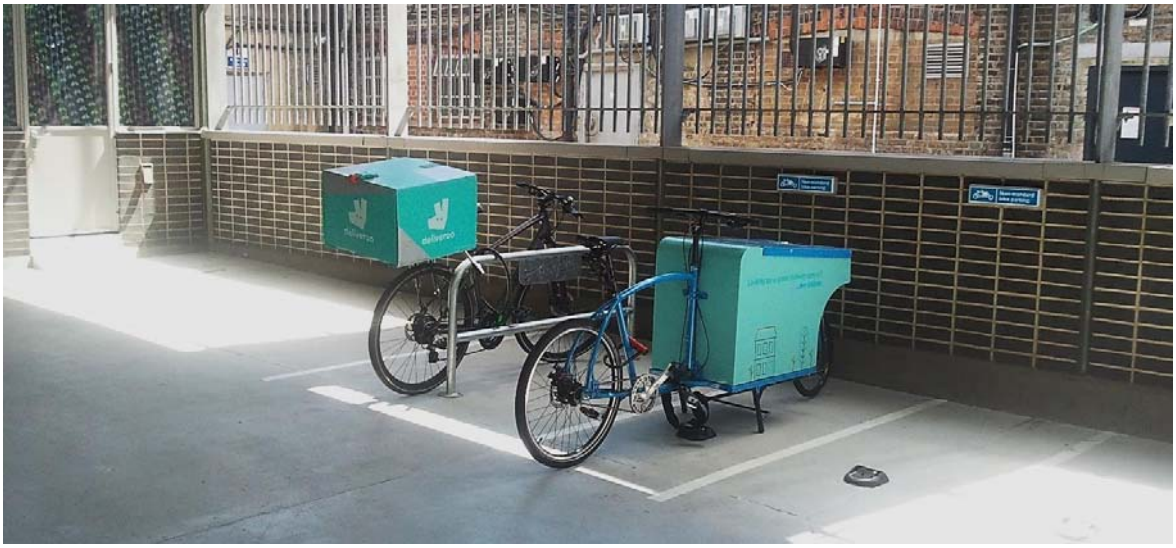


Figure 8.2 Parking clearly denoted for non-standard cycles at Finsbury Park Station

8.34 Any non-standard cycle parking spaces must be clearly signposted and/or identified with ground markings denoting they are for non-standard cycles.

8.35 All proposed cycle parking must include the stand's specification as supporting evidence for the planning application.

CaMden M / Sheffield Stand Layout

8.36 Each CaMden M/Sheffield stand can accommodate two bicycles, one on either side, provided there is sufficient clearance next to the stand and sufficient circulation space so that all cycle parking spaces can be accessed.

8.37 CaMden M stands and Sheffield stands (preferably with a tapping rail) should be provided as set out in TfL's London Cycling Design Standards (figure 8.3).

In order for both the wheels and the frame of the cycle to be secured, locking points should be located roughly 600mm apart and 500mm above the ground.

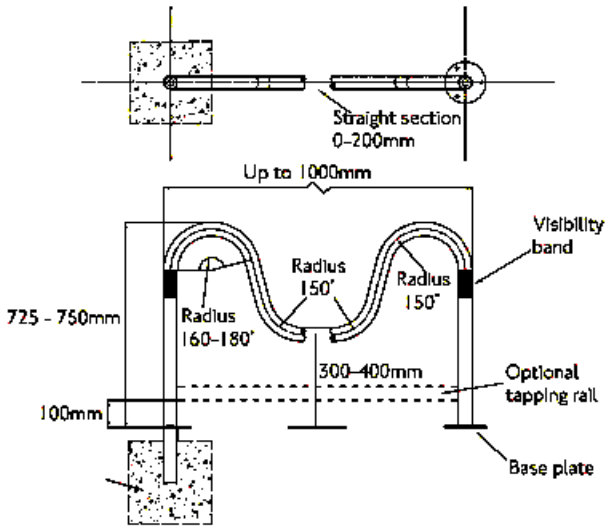


Figure 8.3 CaMden M Stand Plan and Elevation (TfL)

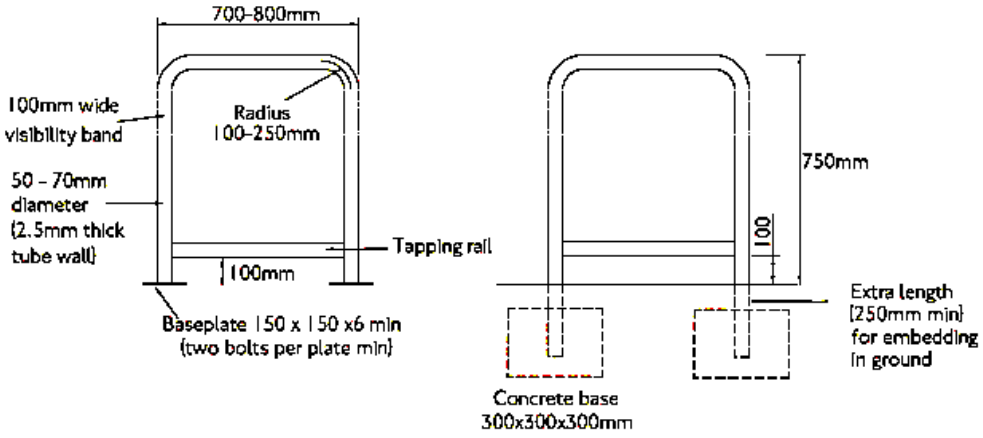


Figure 8.4 Sheffield Stand Plan and Elevation (TfL)

8.38 Adjacent stands for standard cycles must be located 1000mm apart as the general footprint required for each cycle is 500mm in width and 1800mm in length.

8.39 As a general principle, cycle parking should be provided in small clusters. This not only has security benefits but results in a higher number of 'end spaces' which provide more space for wider, non-standard cycles. A larger footprint is required to accommodate a non-standard cycle as, typically, non-standard cycles are 1200mm wide and 2500mm in length. Adjacent stands specified for

non-standard cycles must therefore be located 2500mm apart and at least 2500mm must be allocated to accommodate the length.

8.40 If a stand is next to a physical obstruction, such as a wall or a vehicular path, there must be at least 750mm (standard cycles) and 1450mm (non-standard cycles) between the stand and the physical obstruction to enable both sides of the stand to be used. If a stand is to be placed close to a wall or other physical obstruction so that only one side of it can be used (i.e. only one cycle can be locked to it), there must be at least 300mm between the stand and the physical obstruction.

8.41 Aisles around the cycle store must be at least 1800mm in width for standard cycles and 2500mm in width for non-standard cycles. This provides adequate space for users to walk next to their cycle and turn if necessary. An example cycle store, showing various layout options for standard cycles, is shown in Figure 8.5 below.

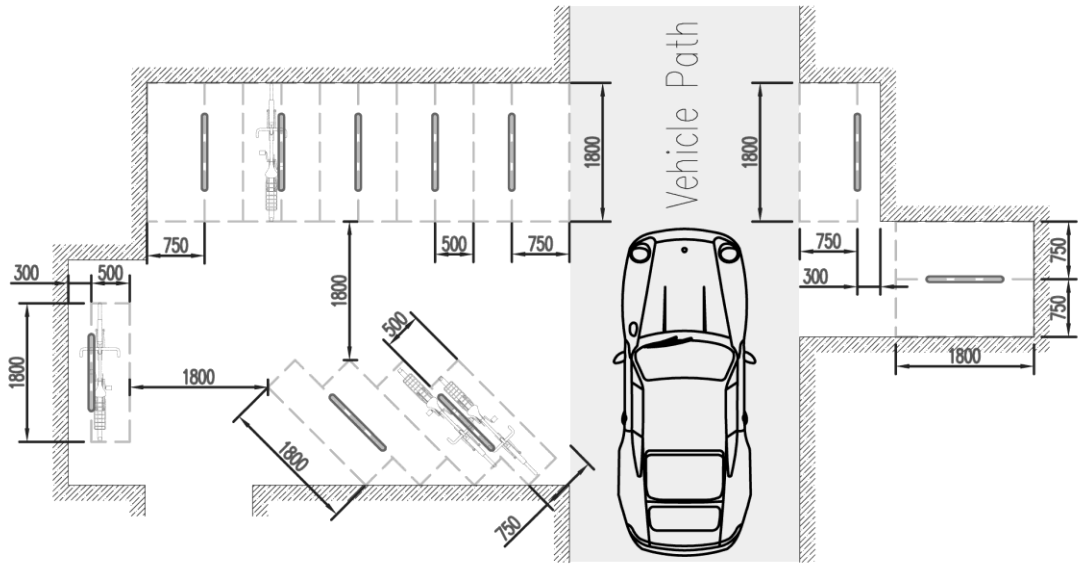


Figure 8.5 CaMden M/Sheffield Cycle Stand Siting for standard cycles

Two-tier Cycle Parking Layout

8.42 While secure, the two-tier system can generally only accommodate standard cycles, and not all users are able to operate the top rack. Therefore, only a proportion of the cycle parking required will be acceptable as this type of facility and the majority of the parking provided must be CaMden M/Sheffield stands.

8.43 Where appropriate, a two tier cycle parking system can be used where there is a ceiling height of at least 2600mm, or as set out in the stand's specification if more.

8.44 In order to enable the top tier to be used, at least 2500mm of clearance in front of the stand is required between rows of stands, walls or other obstructions. The stands can be arranged at different orientations (angles) provided there is 2500mm clearance in front of the rack and aisles around the cycle store are at least 1800mm (standard cycles) and 2500mm (non-standard cycles).

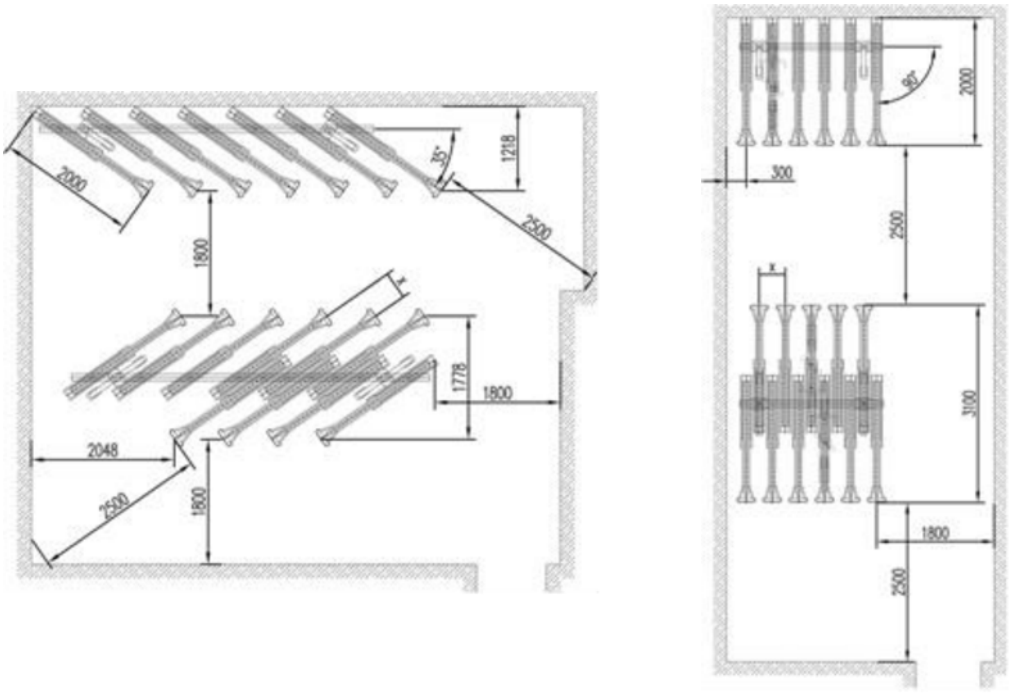


Figure 8.6 Two-tier Cycle Stands Siting for standard cycles

Bike hangars

8.45 Bike hangars provide a covered and secure solution to long-term cycle parking and an effective way to protect bikes from tough weather conditions and vandalism. The Council will always seek to secure long stay cycle parking provision within buildings. However, the provision of bike hangars within sites will be considered in exceptional circumstances (e.g. if step-free access to a potential bike store at basement level cannot be provided). The Council may also seek financial contributions from developers towards the provision of bike hangars on the public highway where long stay cycle parking cannot be provided on site. This would however be a last resort as the Council expects all long stay cycle parking to be provided within site boundaries.

Folding bicycles

8.46 The Council will support applications which provide lockers or space for folding bicycles over and above the London Plan minimum requirements for standard bicycles. However, the provision of space for folding bicycles is generally not an acceptable alternative to conventional cycle parking, as these cycles are only used by a minority of cycle owners, tend to be less affordable and can present difficulties for some users. An exception may be applied for office developments in the Central Activities Zone, where the location of rail termini lends itself to greater levels of folding bicycle use. This should only be applied for up to 10 per cent of long-stay spaces and where the full provision could not otherwise be provided.

Cycle hire schemes

8.47 Cycle hire schemes cater for a different type of cyclist and will not be considered as cycle parking. The Council and Transport for London may however seek financial contributions from developers towards increasing the existing supply of such schemes where demand exists.

Door widths and automated openings

8.48 It is often difficult to pass through multiple sets of doors with a cycle. Applicants will be required to adhere to TfL's London Cycling Design Standards which require users to access the cycle parking area by passing through no more than two sets of doors, with a recommended minimum external door width of 2 metres. All doors to a cycle parking area should be automated – push button or pressure pad operated.

8.49 Internal door widths of a minimum of 1.2m are required for a user to navigate easily and details of this should be included on all proposed plans.

Further information

In addition to the guidance provided in this document reference should also be made to TfL's London Cycling Design Standards.

Other supporting documents include:

- Wheels for Wellbeing Cycle Infrastructure Guidance
- Interim Advice Note 195/16 Cycle Traffic and the Strategic Road Network IAN 195/16
- Manual for Streets

9. Pedestrian and Cycle Movement

KEY MESSAGES

- All developments must have due regard to the safety, ease of movement and the quality of pedestrian and cycle facilities for people moving to and within a site.

9.1 This section relates to Local Plan Policy T1 (Prioritising walking, cycling and public transport) and Policy D1 (Design). It provides guidance on the design and layout of pedestrian and cycle facilities and aims to ensure that a good quality and accessible environment is provided.

9.2 The Council will consider the impacts of movements to, from and within a site and will support applications that encourage sustainable travel. This section should be read in conjunction with Section 2 (Assessing Transport Capacity) and Section 7 (Vehicular Access) of this CPG where applicable.

9.3 The following section includes guidance on:

- The design and layout of public spaces;
- Ease of pedestrian and cycle movement (permeability);
- Safety; and
- Legible London.

When does this apply?

9.4 This guidance applies to planning applications that involve a change in the way that a site is accessed, how people move in and around the site or when there is a change in the number of movements to or within a site. It also applies to applications where vehicle movements affect pedestrians and cyclists.

9.5 The term ‘footways’ used throughout this guidance refers to footways both on private land and on the public highway.

The design and layout of streets and public spaces

9.6 In line with Local Plan Policies T1 and D1, we will seek to secure high quality design in development. We will seek improvements to streets and spaces, both on and off site to ensure good quality access and circulation arrangements for

all. This includes improvements to existing routes, footways, footpaths and cycling infrastructure that serve the development.

9.7 Key considerations to be given to the movement of people in and around a site include the following:

- Ensuring the safety of vulnerable road users, including children, elderly people and people with mobility difficulties, sight impairments, and other disabilities;
- Maximising pedestrian and cycle accessibility and minimising journey times making sites 'permeable';
- Providing stretches of continuous footways without unnecessary crossings;
- Making it easy to cross where vulnerable road users interact with motor vehicles;
- Linking to, maintaining, extending and improving the network of pedestrian and cycle routes;
- Maximising safety by providing adequate lighting and overlooking from adjacent buildings;
- Taking account of surrounding context and character of the area;
- Providing a high quality environment in terms of appearance, design and construction, considering Conservation Areas and other heritage assets, and using traditional materials (such as natural stone), SuDS and planting (trees, pocket parks etc.) where appropriate;
- Investing in the public realm to create inclusive spaces that support greater social interaction (places to sit, sheltered, not too noisy, safe etc);
- Use of paving surfaces which enhance ease of movement for vulnerable road users;
- Avoiding street clutter and minimising the risk of pedestrian routes being obstructed or narrowed, e.g. by footway parking or by unnecessary street furniture; and
- Having due regard to design guidance set out in the Camden Streetscape Design Manual, TfL's London Cycling Design Standards, TfL's Pedestrian Comfort Level Guidance and TfL's Healthy Street Indicators.

9.8 In line with Local Plan Policy A1, where developments generate the need for works to the public highway these should be funded by the developer and implemented by the Council in order to ensure construction is to a suitable standard for adoption. Refer to Section 2 (Assessing Transport Impact) of this CPG for situations when this may be required.

Pedestrian and Cycle Permeability

9.9 Pedestrian and cycle routes through a site must be direct and legible, following the natural desire line, and must be easy and safe to walk and cycle through via step-free access. The Council will resist proposals that seek to 'gate' an area or community or restrict access through a site at certain times.

9.10 Footways or footpaths must be wide enough for two people using wheelchairs, or prams, to pass each other, although we seek to maximise the width of footways wherever possible. Reference must be made to TfL's Pedestrian Comfort Level Guidance (PCL) guidance which sets out minimum widths based on footways in different environments and pedestrian flows. The Manual for Streets also provides guidance on this.

9.11 We will seek a PCL assessment for applications where a development will:

- change the way the site is accessed; or
- result in an increase to the number of trips to and from the site.

The PCL assessment should be submitted as part of the overall transport assessment, as set out in Section 2 of this guidance.

9.12 The design of cycle routes must be in line with the minimum widths set out in TfL's London Cycling Design Standards (LCDS) and must accommodate all types of cycle including wider non-standard cycles such as cargo bikes or cycles adapted for disabled users. More information on the types of cycle can be found in Section 8 (Cycling Facilities) of this CPG.

9.13 Where shared surfaces are proposed, involving vulnerable road users and vehicles using the same space, traffic management measures should also be used to reduce vehicle speeds. Measures to reduce vehicle speeds should not limit visibility for pedestrians and vehicles, and must not prejudice safety. Further measures to promote safety include:

- The removal of parked vehicles from the shared surface to avoid potential conflicts; and
- Provision of clear routes and surface textures to assist orientation of people with visual impairments.

9.14 The footprint of a development adjacent to the pedestrian footway should not include projections into the footway, nor should it include recesses within the building outline. The back of the footway must be free from obstruction to assist visually impaired users and to avoid unwanted gathering of litter and antisocial behaviour.

9.15 The Council will resist proposals that involve the opening of external doors or gates onto footways or footpaths, other than those required for emergency escape routes and electricity sub-stations, as they raise safety concerns, and can obstruct pedestrians. Any doors or gates which need to open outwards will need to be carefully located to minimise the impact on pedestrians using adjacent footways and footpaths.

9.16 Footways should be designed with frequent and convenient road crossing points for pedestrians. The Council will seek to secure financial contributions to provide new and improved pedestrian crossings where this would be necessary to make a development acceptable in planning terms.

Lighting, signage and street furniture

9.17 Footways and footpaths should be well lit and well signed, but with care to avoid light pollution and obstructions. Wherever possible, lighting and signs should be placed on buildings or existing street furniture to minimise clutter.

9.18 The installation of seating, bus shelters, litter bins and cycle parking is encouraged in association with new footways and footpaths provided that it will improve the pedestrian environment or encourage the use of sustainable modes of transport. They must be positioned so that they do not interrupt the pedestrian desire line and so they do not interrupt the minimum area of footway or footpath designated for pedestrians as set out within TfL's Pedestrian Comfort Level guidance.

9.19 Applications for new telephone kiosks on the public highway will be resisted by the Council where proposals would result in a detrimental impact on pedestrians and/or the street environment. Applications of this nature must demonstrate that they would not interrupt the minimum area of footway or footpath required and would not impede or obstruct the desire lines for pedestrian movement. This is particularly important for people with protected characteristics such as people who are blind or partially sighted. The position of the kiosk must be within the existing street furniture zone and must not compromise highway safety or prevent kerbside activity such as loading/unloading and parking.

9.20 Any minimum standards for footway widths should not be used to justify the provision of unnecessary street clutter or any reduction in footway or footpath widths. The Council will take into account the full unobstructed width when assessing proposals.

Tables and chairs

9.21 The Council will sometimes licence the placing of tables and chairs on the footway in association with adjacent cafes and similar uses. The area where tables and chairs may be placed must be designated and must not interrupt the area of footway available for pedestrian movement. Applicants must demonstrate that the design does not impact on the pedestrian comfort level and provides adequate footway width as set out in TfL's Pedestrian Comfort Level guidance.

9.22 The licence will specify permitted hours, after which the removal of tables and chairs will generally be required. Further guidance on tables and chairs is provided in Camden Planning Guidance document CPG Town Centres and on Camden's Tables and Chairs website.

Security

9.23 Footpaths independent of roads can be beneficial in terms of following the most direct routes for pedestrians and creating pleasant environments. To provide security for pedestrians and cyclists, and discourage anti-social behaviour, designs should consider:

- Lighting;
- Maintaining clear and unobstructed sightlines along the entire length of newly created routes;
- Natural overlooking from adjacent buildings; and
- The appropriateness of soft landscaping measures (e.g. trees and planting).

Pedestrian wayfinding signage

9.24 The Council will seek wayfinding signage on both the public highway and private land for developments that contain:

- Key routes to or though the site;
- Decision points, arrival points and places where pedestrians are likely to gather;
- Complex spaces; and/or
- Where a site is located near to areas or points of specific interest including civic spaces and public buildings.

9.25 Legible London was set up by Transport for London (TfL) in partnership with London boroughs to create a standard pedestrian wayfinding and signage system for central and inner London. It is a map-based system which gives users a good understanding of the surrounding area and encourages them to

choose their own route to a specific destination. Such signing is useful in encouraging people to make short journeys on foot rather than by motor vehicle or public transport.

9.26 Developments in appropriate locations will be expected to provide contributions to wayfinding signage on the public highway in order to mitigate the increased level of activity their development generates and to encourage trips to be made by sustainable modes of transport. Refer to Section 2 (Assessing Transport Impact) of this CPG for further information.

10. Petrol Stations

10.1 There are currently four active petrol filling stations in the borough on sites at:

- 104A Finchley Road;
- 215 Haverstock Hill;
- 55 Chalk Farm Road (Morrison's Supermarket); and
- 196 Camden Road

10.2 The Council strongly supports car-free development and our Transport Strategy aims to reduce car use and ownership throughout the borough. However, we recognise that existing petrol stations serve essential car users and may have a role in supporting the transition from petrol and diesel vehicles to low emission vehicles (e.g. electric) and automated vehicles. Where there is a proposal to redevelop an existing petrol filling station, the Council will expect the impact on the road network (e.g. vehicle miles travelled) and the Borough's residents to be thoroughly examined. This should include considering the number of visits to an existing petrol station as well as mapping of alternative facilities, including any supermarkets that supply petrol.

10.3 The Council will support proposals enabling the continued operation of the borough's petrol filling stations for the refueling of vehicles as the principle use of the site (Sui Generis). This could include remodeling to facilitate new technologies such as electric vehicle charging points and the provision of other low emission fueling options such as hydrogen.

Appendix A: Thresholds for Transport Assessments and Transport Statements

The table below gives guidance on the scale of development that is likely to generate a significant travel demand and thus would require either a Transport Assessment or Transport Statement.

Land Use	Guideline floorspace threshold for Transport Statement	Guideline floorspace threshold for Transport Assessment
A1 - Shops	500 sqm GFA or more	1,000 sqm GFA or more
A2 - Financial and Professional Services		
A3 - Restaurants and cafés	250 sqm GFA or more	5,000 sqm GFA or more
A4 - Drinking establishments		
A5 - Hot food takeaway		
B1 – Business	1,000 sqm GFA or more	2,500 sqm GFA or more
B2 - General Industry		
B8 - Storage and Distribution		
C1 – Hotels	10 beds or more estimated at 200 sqm GFA or more	50 beds or more, estimated at 1,000 sqm GFA or more
C2 - Residential Institutions	Always sought where justified by travel demand or transport conditions	Always sought where justified by travel demand or transport conditions
C3 – Dwellings	10 units or more	25 units or more
Student housing	Will be considered as 'C3 dwellings' above where one student bed will be considered to be equivalent to 1 unit.	
D1 - Non-residential institutions	Always sought where justified by travel demand or transport conditions	Always sought where justified by travel demand or transport conditions
D2 – Leisure	500 sqm GFA or more	1,000 sqm GFA or more
Sui generis	Will be considered as the nearest equivalent use	

Where a development is formed of multiple land use classes whose floorspace falls below the threshold guidance set out in the table above individually but collectively exceeds the minimum guidelines, a Transport Assessment or Statement would also be required.

In some circumstances where a development has travel patterns of a larger development, for example a significant number of person trips or vehicular trips per day, but falls below the floorspace guidelines set out above, the Council may also require a Transport Assessment or Statement if deemed necessary.

Appendix B: Scope of Transport Assessments and Statements

The table below gives guidance on what should typically be included in a Transport Assessment or Transport Statement. The guidance is designed to be a rough guide and applicants are advised to determine the full scope with the Council early on in the planning application stage. Assessments should specify how any baseline conditions or projections are influenced by the timing of local school holidays. The Council expects assessments to consider the impact on traffic flows on days that local schools are operational. Developers are advised to discuss and agree the scope of supporting traffic surveys (including any parking beat surveys) with the Council.

Section	Topic
Introduction & Background	Site location
	Planning designations
	Full Description of development proposals
	Details of any previous applications (if applicable)
	Design and Access Statement
Baseline Conditions - Micro	Existing land use with floor areas
	PTAL
	Pedestrian facilities, including details of any stepped free access
	Cycle parking - inc. details of cycle parking for non-standard cycles
	Car parking - inc. details of EVCPs / car clubs etc. (if applicable)
	On-street loading provision
	On-street parking controls and usage
	Delivery and servicing facilities
Baseline Conditions - Neighbourhood	Collision analysis
	Walking and cycling trip attractors
	Pedestrian network – existing routes & facilities (inc. audits)
	Cycle network – existing routes & facilities (inc. audits)
	Pedestrian and cycle flows
	Traffic flows including operational traffic flows
	Pedestrian comfort levels
	Junction capacities

	Public transport services, routes, frequencies, accessibility & stops
	Public transport capacity
	Taxi rank locations (if applicable)
Baseline Conditions - Network	Cycle network – existing routes & facilities (inc. audits)
	Cycle flows
	Traffic flows including operational traffic flows
	Junction capacities (if applicable)
	Public transport services, routes, frequencies, accessibility & stops
	Public transport capacity
Section	**Topic**
Trip Generation - Existing and Future trips*	Total generated
	Mode split
	Trip distribution
	Temporal breakdown
	Source data and methodology
	Delivery & servicing trip distribution/timing
Construction	Anticipated build period
	Total construction trips generated
	Construction routes
	Impacts on pedestrian and cyclist routes and facilities
Impacts - Micro	Pedestrian facilities, including details of any stepped free access
	Cycle parking - inc. details of cycle parking for non-standard cycles
	Car parking - inc. details of EVCPs / car clubs etc. (If applicable)
	On-street loading provision
	On-street parking controls and usage
	Delivery and servicing facilities
Impacts - Neighbourhood	Pedestrian network – routes & facilities (inc. audits)
	Cycle network – routes & facilities (inc. audits)
	Pedestrian and cycle new demand
	Predicted traffic flows including operational traffic flows (if applicable)
	Pedestrian comfort levels for new demand

	Junction analysis for new demand (if applicable)
Impacts – Neighbourhood (continued)	Public transport services, routes, frequencies, accessibility & stops
Impacts - Network	Cycle network – routes & facilities (inc. audits)
	Traffic flows including operational traffic flows (if applicable)
	Junction capacities for new demand (if applicable)
	Public transport services, routes, frequencies, accessibility & stops
Cumulative Impacts	Local additional development impacts
Section	**Topic**
Mitigation	Cycling/walking improvements
	Road network improvement measures (if applicable)
	Public Transport network improvement measures (if applicable)
	Travel Plan
	Delivery and Servicing Plan
	Car Park Management and Reduction Plan (if applicable)
	Construction Management Plan
	Planning obligations / section 106 Mitigation Measures

* The TRICS database should be used to inform trip generation where sites with recent surveys and comparable characteristics such as land use, scale, PTAL and car parking must be used. Details of the criterion must be included in the TA.

Appendix C: Examples of on-site, highways and public transport contributions

A whole range of developments may require works to be carried out to the surrounding streets and public spaces to ensure that the site can be safely accessed, and to allow a new development to properly and safely function, and could include any of the items listed below.

Site specific works could include:

- a connection to a public highway;
- alterations and improvements to junctions;
- new or improved footways and pedestrian facilities;
- new or improved cycle routes and cycle stands;
- new traffic islands/refuges;
- pavement reinstatement and resurfacing;
- new or improved crossings and traffic control signals;
- crossovers;
- road closures / stopping up;
- road realignment and/or widening;
- bridge works;
- traffic reduction and calming measures;
- parking management schemes/revisions to a CPZ;
- Traffic Regulation Orders, e.g. loading areas;
- works and improvements to canals and waterways.

Other site specific public realm works may include:

- retention, repair or reinstatement of historic surface treatments;
- making access to a new development easier and safer for disabled people;
- trees on streets, public or private open spaces;
- street furniture (in some cases removal/rationalization of street furniture would be appropriate);
- improved street lighting;
- associated signage;
- public art – either within public areas or on private land visible from the street;
- CCTV;
- associated drainage works;
- specific site related conservation area enhancement; and specific area initiatives, e.g. town centre improvements.

Where public transport provision is not adequate to serve a development, and the absence of such provision would make a development unacceptable the Council may seek a contribution to public transport provision. This will be informed by the findings of the transport assessment.

Examples of contributions the Council may seek are:

- contributions to existing provision so that they can serve the development better (e.g. enhancing routes to stops, providing shelters, better seating and real-time information at stops, or increasing service frequencies); and

- seeking contributions towards pooled funds to be used towards a particular provision or type of provision (examples could include funds for bus priority measures extending some distance along a route, for an extension to a route, or for a co-ordinated series of measures across an area to make public transport safer at night).

Appendix D: Thresholds for Travel Plans

The table below gives guidance on the scale of development that is likely to generate the requirements of a Travel Plan. The guidelines are intended to be a rough guide. Specific requirements should be discussed with the Council during the planning application stage.

Development Use	Local Level Travel Plan	Strategic Level Travel Plan
Shopping Centre	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
A1 food / non- food retail	More than 20 staff but less than 1,000sqm	Equal or more than 1,000sqm
Garden centres	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
A3/A4/A5 food and drink	More than 20 staff but less than 750sqm	Equal or more than 750sqm
B1 including offices	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
B2 industrial	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
B8 Warehouse and distribution	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
C1 hotels	More than 20 staff but less than 50 beds	Equal or more than 50 beds
C3 residential	Between 50 and 80 units or where justified by travel demand or transport conditions	Equal or more than 80 units or where justified by travel demand or transport conditions
Student housing	Will be considered as 'C3 dwellings' above where one student bed will be considered to be equivalent to 1 unit.	
D1 hospitals / medical centres	Between 20 and 50 staff	Equal or more than 50 staff
D1 schools	All developments to have a school travel plan	All developments to have a school travel plan

D1 higher and further education	More than 20 staff but less than 2,500sqm	Equal or more than 2,500sqm
D1 Museum	More than 20 staff but less than 100,000 visitors annually	Equal or more than 100,000 visitors annually
D1 places of public worship	More than 20 staff/volunteers but less than 200 members/ regular attendees	Equal or more than 200 members/ regular attendees
Development Use	**Local Level Travel Plan**	**Strategic Level Travel Plan**
D2 assembly and leisure (other than stadia)	More than 20 staff but less than 1,000sqm	Equal or more than 1,000sqm
D2 stadia	More than 20 staff but less than 1,500 seats	Equal or more than 1,500 seats
Sui generis	Will be considered as the nearest equivalent use	

In addition to Camden's own requirements, Transport for London recommends that a Travel Plan be submitted for any residential development of over 50 units. TfL's thresholds can be found on their website here

Pedestrian Comfort Guidance for London

Guidance Document

MAYOR OF LONDON

Transport for London

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Pedestrian Comfort Level Guidance First Edition 2010

Version 2 (2019) - New link to spreadsheet added

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Transport for London

Contents

Introduction

Who should use this guide?

This guide and accompanying spreadsheet is aimed at anyone involved in the planning of London's streets, whether TfL staff, local authority officers, elected members, consultants assessing the impact of development proposals, developers, or their agents. It is intended to ensure that the design of pedestrian footways and crossings are appropriate to the volume and type of users of that environment. The guidance is applicable whether evaluating a new design or assessing an existing footway.

What is the guide for?

The primary objective of the guidance is to assist those responsible for planning London's streets to create excellent pedestrian environments through a clear, consistent process during the planning and implementation of transport improvement projects.

For **existing sites;** undertaking a comfort assessment will identify priorities for action or attention, the cause of these issues and help to identify mitigation measures to make the site more comfortable.

For **schemes in development;** undertaking a comfort assessment will identify any potential problems at an early stage. Mitigation measures, such as the relocation of street furniture, can then be decided upon if required.

Why this guide is important

Footway provision is an essential factor in encouraging or hindering walking. Providing appropriate footways is important as:

- They encourage walking. The research underpinning this guidance has found that lack of comfort on footways discourages use of an area by pedestrians.
- In London, encouraging people to walk short trips will relieve pressure on public transport and promote more sustainable, environmentally friendly travel, with added health benefits. Moreover, regularly making trips on foot benefits the health of individuals as well as bringing wider economic and community benefits.
- Journeys conducted entirely on foot make up 24% of all trips in London. In addition, most other trips involve some walking (for example from the bus stop to home and vice versa). Therefore creating well designed pedestrian environments benefits everyone.

Recognising this, TfL has developed this guidance to improve the planning and design of the pedestrian environment and encourage walking. This guidance is tailored to the needs of London and provides a comprehensive approach by:

- Taking into account different user behaviour within a variety of area types, from high streets to transport interchanges.
- Including the real impact of street furniture and static pedestrians, for example, window shoppers.
- Going further than existing measures such as Fruin Level of Service which simply assess crowding. This guidance is based on comfort and takes into account user perceptions as well as observed behaviours.
- Providing a standard approach for the assessment and review of comfort on footways and crossings.
- Providing a template for recording data and generating results.

The Pedestrian Comfort Level for London should be considered when assessing both footways and formal pedestrian crossings. The provision of comfortable crossing facilities supports road crossing in a planned manner and may reduce the number of informal crossings that occur. Although tailored to London, as the guidance is based on area types it is applicable in other locations.

How to use this guide

This guidance document contains the method for carrying out a comfort assessment and guidance on reviewing the results. This has been designed with an accompanying spreadsheet for recording data and calculating the results.

The spreadsheet is available to download from http://planning.data.tfl.gov.uk/Pedestrian%20Comfort%20Level%20calculator.xls

If the design is at an early stage, **recommended minimum widths** can be found on page 25 in the appendix. This information provides an initial indication as to comfortable footway widths in different environments in advance of a full comfort assessment.

Undertaking a comfort assessment

Pedestrian Comfort Levels classify the level of comfort based on the level of crowding a pedestrian experiences on the street. Guidance is provided for different area types and times of day.

Pedestrian crowding is measured in pedestrians per metre of clear footway width per minute. This is calculated from data on pedestrian activity and the street environment.

This Pedestrian Comfort Level Guidance caters for both footways and pedestrian crossing points to ensure that the full pedestrian environment is assessed and reviewed. Figure 1 summarises this assessment and review process which is detailed on the following pages.

Although use of this tool for internal reviews during the design cycle is encouraged, it is assumed that some schemes will be subject to an external review from a reviewing authority. This is likely to be the planning or highway authority responsible for the site. The scope of the assessment and any assumptions should be agreed with the reviewing authority before the process begins.

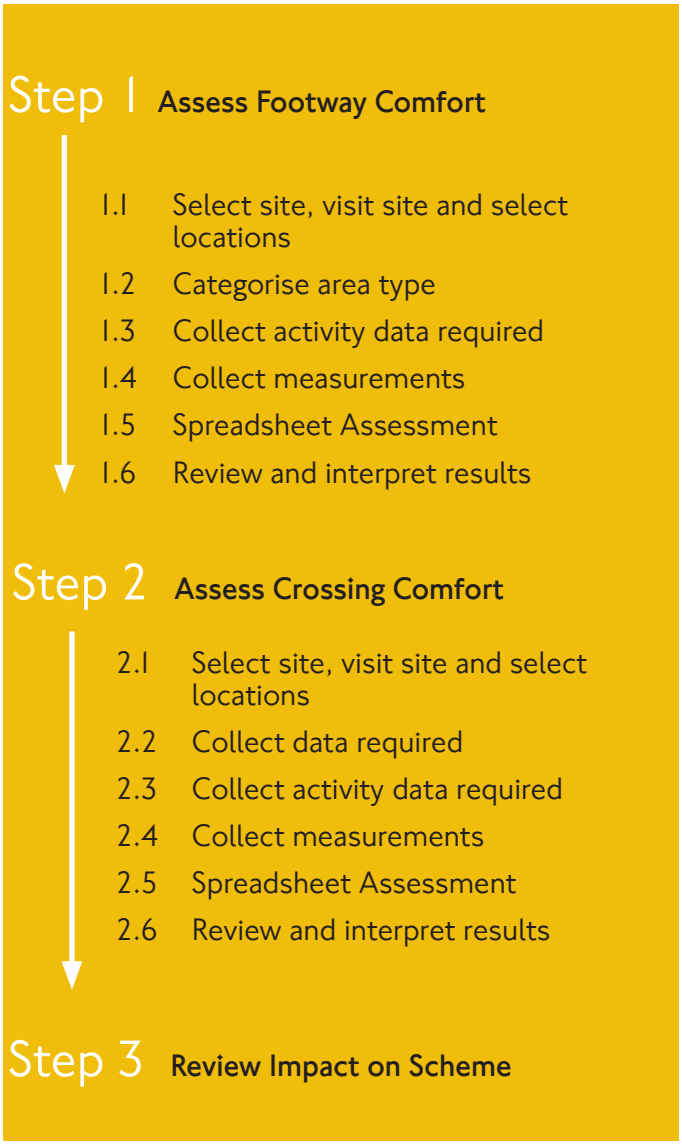


Figure 1 Pedestrian Comfort Level Assessment and Review Process

Step 1 Assess Footway Comfort

STEP 1.1 Select Site and Locations

The aim of a pedestrian comfort assessment is to understand the pedestrian experience as people walk along the street. Therefore a number of locations along a street (the site) are assessed to understand the level of comfort, and how this may change due to street furniture or changes in width for example. A Pedestrian Comfort Level (PCL) is calculated for each location, allowing a review of the whole site as well as individual problem areas. The assessment does not look at the quality of the footway or associated issues such as maintenance and rubbish that may affect the use of an area. Other assessments exist for these issues.

The site for the comfort assessment will be defined at the outset of the process in agreement with the reviewing authority. A site visit should then be undertaken to agree the boundaries of the site, the locations for assessments and to consider the following questions:

- What area type is the site (see step 1.2)?
- Are there any locations with high static activity (e.g. meeting friends, queuing, taking photographs) that may require a static activity survey? For more information see Appendix D: Measuring Pedestrian Activity on page 33.
- Do people cross away from the formal crossing facilities?
- Are there signs that the site is a route to and from school? This could include school age children, school crossing wardens and other indicators such as “only two schoolchildren at a time” signs on the local shops.
- Any other notes about pedestrian activity and behaviours that may be relevant.

If the scheme is in development and a site visit is impossible, or the scheme is going to significantly change the flow and activity profile in the area (e.g. a new shopping centre) assumptions should be agreed with the reviewing authority before the assessment begins.

The number of locations assessed will be specific to each site, but may include (where appropriate):

- A location with the typical footway width for the site and no street furniture.
- Locations where full footway width changes, and there is no street furniture.
- Locations which include the typical street furniture.
- Locations where there are bus stops, cafes, market stalls or other locations where there are high levels of people waiting.
- Locations where the street furniture are not aligned parallel to the building edge or kerb edge or there are more than two pieces within a length of three metres.

STEP 1.2 Categorise Area Type

Following the site visit, classify your site as one of the following area types. This will inform the data requirements for the assessment, and later, the impact of the results.

Not all sites fall into a distinct area type, for example a site could include a tourist attraction and commercial office buildings. In this situation, agree with the reviewing authority how you are going to conduct the data collection and assessment.

High Street

Areas dominated by a range of retail and food and drink premises represent a focus for the communities that use the services they offer.
Peak Pedestrian Time: Saturday 14:00 to 18:00, although weekday flows often have similar levels

Office and Retail

Areas dominated by substantial government and/or commercial office buildings. These streets experience high volumes of pedestrians.
Peak Pedestrian Time: Weekday 08:00 to 10:00 or 16:00 to 19:00

Residential

These areas are characterised by privately owned properties facing directly onto the street.
Peak Pedestrian Time: Weekday 14:00 to 19:00

Tourist Attraction

An area with high tourist activity. This could include attractions such as Madame Tussauds or renowned "sights" such as the South Bank, the Royal Parks etc.
Peak Pedestrian Time: Saturday 12:00 to 17:00

Transport Interchange

Transport Interchanges help to provide seamless journeys for people travelling in London. They range from local interchange between rail and bus to National Rail interchanges.
Peak Pedestrian Time: Weekday 08:00 to 10:00, 16:00 to 19:00

STEP 1.3 Collect Activity Data

To carry out a Pedestrian Comfort assessment, the following pedestrian activity data is required. A methodology for collecting this data can be found in Appendix C: Street Furniture on page 26.

- Pedestrian flow data for footways and crossings.
- A static activity survey to record the reduction in space available for walking from static activity unrelated to street furniture (meeting friends, queuing, taking photographs) is recommended at regional retail centres and tourist attractions as these areas tend to generate a lot of this activity.
- Also note any other relevant activity (e.g. delivery operating times if a loading bay is present).

STEP 1.4 Collect Measurements

To carry out a Pedestrian Comfort assessment, data on the footway width and the location and type of street furniture is required. This is used to calculate the clear footway width, which is the space available for walking after street furniture and its associated buffers are taken into account. This can be measured on site or from suitable records (e.g. a topographic survey). An explanation of the buffers for different street furniture can be found in Appendix C.

When collecting the measurements you may find it useful to mark up a plan with the buffers around each of the objects, as shown in the example below. This allows any space between object buffers that is less than 0.6m (standard body ellipse) to be identified as this should not be included in the clear footway width. The example below can also be found on the footway tab of the spreadsheet.

Diagram showing how to collect measurement data:

- A) This location is the typical width for the street. It has no street furniture, therefore you simply need to enter the total width (9.7m) into the spreadsheet. The spreadsheet will then deduct the standard kerb and building edge buffer (both 0.2m) to calculate the clear width (9.3m).
- B) This location has two pieces of street furniture. First enter the total width into the spreadsheet (8.3m). Then enter the size of the street furniture and the buffers around them. Finally, from the marked up plan, check that the smaller spaces e.g. between the signal box and cycle parking is more than 0.6m (standard body ellipse). In this case the space between the space between the signal box buffer and the kerb buffer is 0.45m. This is entered into the spreadsheet as "unusable space" and is not included in the clear footway width.
- C) As with location B, enter the total width and the size of the street furniture and associated buffers. Finally, double check that the space between the cycle parking buffers and the kerb and building line buffer is more than 0.6m (it is 0.85m).
- D) As with location A this location does not have any street furniture but is measured as it represents a significant change in width from the rest of the street. Simply enter the total width into the spreadsheet to work out the clear footway width.

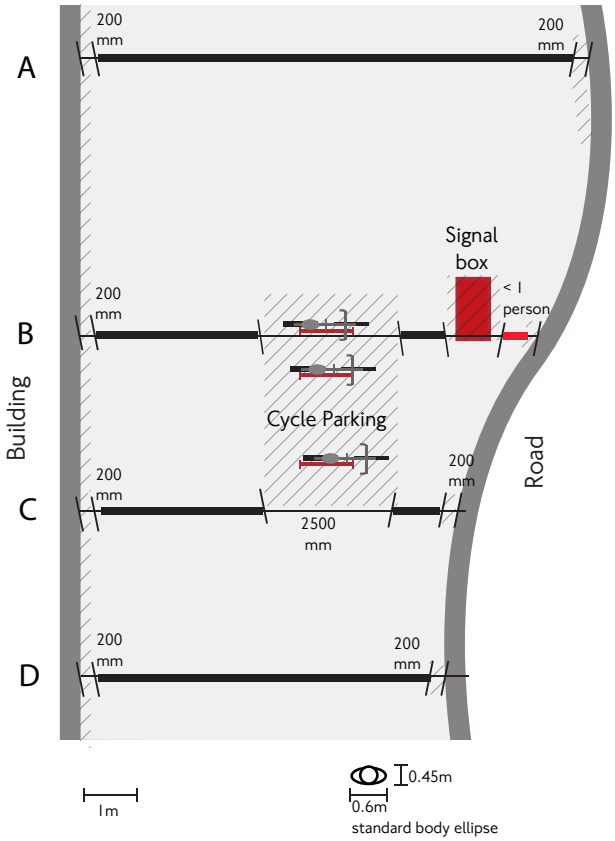


Figure 2 Example of marking up a site for assessment

STEP 1.5 Spreadsheet Assessment

Using the data and information collected in steps 1.1 to 1.5, use the "Worksheet (Footway)" tab of the spreadsheet to calculate the crowding and therefore the Pedestrian Comfort Level for each of the locations on your site. Figure 3 below shows how the spreadsheet looks.

1. Input Activity Data

For each location enter the activity data for the site

- Location name - this is defined by you.
- Area Type - this is a drop down box.
- Average Flow - average of all the samples taken throughout the survey hours.
- Peak Hour Flow- average of the samples recorded in the peak hour.
- Average of Maximum Activity - this is automatically calculated by the spreadsheet as a check. It is based on an average of the busiest 10 second samples from the research underpinning the project.

2. Input Measurement Data

Using your measurements taken on site or from records such as a topographic survey and the buffer zones from street furniture (outlined in Appendix C) complete the measurement data for each location - this is columns J to V and is measured in metres.

If, after the consideration of street furniture and its buffer zone, there is any space for movement that is less than 0.6m wide (a standard body ellipse) this should be entered into column M "Any unsuable width" in metres.

3. Calculations

The spreadsheet will then automatically calculate the following:

- Clear Footway Width - This is the space left for walking after the standard wall and kerb buffers and any street furniture is taken into account
- Crowding - Pedestrian crowding is measured in pedestrians per metre of clear footway width per minute (ppmm) and is calculated using the following formula:

  people per hour ÷ 60 ÷ clear footway width in m

  This is calculated for Average Flow, Peak Hour Flow and Average of Maximum activity
- Pedestrian Comfort Level Categorisation - The crowding level (ppmm) is then categorised according to the Pedestrian Comfort Level scale. See page 13 for more information on this scale.
- Clear Footway Width required for PCL B+ - The spreadsheet also calculates the clear footway width required to achieve a PCL of B+. This is to aid decision making, as PCL B+ is the recommended level of comfort for most area types.

PEDESTRIAN COMFORT ASSESSMENT: FOOTWAY COMFORT

Clear Examples

											Street Furniture 1			Street Furniture 2			Street Furniture 3						
	Location Name	Location Type	Area Type	Average Flow	Peak Hour Flow	Ave of Max Activity	Total Width	Building Edge?	Kerb Edge?	Any unusable width (<0.6m)	Type	Width of Furniture	Buffer	Type	Width of Furniture	Buffer	Type	Width of Furniture	Buffer	Clear Footway Width	Average Flow Crowding (ppmm)	Peak Hour Flow Crowding (ppmm)	Ave of Max Activity Crowding (ppmm)
1	Guidance p 9 Location A	Static Activity	High Street	1800	2800	5400	9.7	Yes	Yes											9.3	3	5	10
2	Guidance p 9 Location B	Street Furniture (Multiple)	High Street	1800	2800	5400	8.3	Yes	Yes	0.45	Cycle Parking	2.5		Signal Box	0.6	0.4				3.95	8	12	23
3	Guidance p 9 Location C	Street Furniture (Single)	High Street	1800	2800	5400	6.9	Yes	Yes		Cycle Parking	2.5								4	8	12	23
4	Guidance p 9 Location D	Full Footway Width	High Street	1800	2800	5400	6.6	Yes	Yes											6.2	5	8	15
5																							

Figure 3 The "Worksheet (Footway)" tab

STEP 1.6 Review and Understand Results

After completing the calculations, change to the "Print Sheet (Footway)" tab of the spreadsheet. This sheet summarises the results for each location and has four main sections.

Summary Information

This section summarises the key information about each location including the area type, activity levels, the space available for movement and the footway space used by street furniture and its associated buffers (impact of street furniture).

Summary Info	Location Name	Guidance p 9 Location A
	Location Type	Static Activity
	Area Type	High Street
	Average Flow (PPH)	1,800
	Peak Hour Flow (PPH)	2,800
	Total Footway Width	9.7m
	Clear Footway Width	9.3m
	Total Street Furniture Impact	0m

Figure 4 Summary information as shown on printing tab

Pedestrian Comfort Level

This section highlights the Pedestrian Comfort Level (PCL) the site operates at during the **Peak Hour Flow**. Footways should be designed to operate comfortably during the peak hour. This is colour coded to aid understanding. As well as identifying the PCL this section highlights the clear width required for PCL B+ and the total width required for PCL B+ (assuming the street furniture at the site remains the same).

A guide to the Pedestrian Comfort Levels can be found on page 13.

This section also highlights the PCL for the **Average of Maximum Activity**. This is included as a check to allow you to understand how the footway may feel in the busiest times. This will only impact your review of the footway if the results are significantly different than the peak hour flow. More information is included in the impact section.

Pedestrian Comfort (At peak hour flow levels)	Pedestrian Comfort Level (PCL)	A : 5 ppmm
	Total Width Required for PCL B+	4.29
	Clear Width Required For PCL B+	3.89
Pedestrian Comfort (Average of Maximum Activity)	Pedestrian Comfort Level (PCL)	B+ : 10 ppmm
	Total Width Required for PCL B+	7.91
	Clear Width Required For PCL B+	7.51

Figure 5 Pedestrian Comfort Level results

Impact

Using the PCL and area type, the spreadsheet provides an explanation of the impact of the Pedestrian Comfort Level at each location for both Peak Hour Flow and the Average of Maximum Activity. This is to inform your decision making in the next stage.

The information and recommendations provided in this section are based on the guidance outlined in the table on page 14.

Impact	Pedestrian Comfort at Peak Hour Flow	The footway on this site should be comfortable for its intended use at most times. However, you may need to reassess the site in future.
Impact	Pedestrian Comfort at Average of Maximum Activity	Even when under additional stress, the footway on this site should be comfortable.

Figure 6 Example of impact section on printing tab

Notes and Mitigation

This section allows you to provide extra information to inform the discussion with the reviewing authority. The notes field can be used to highlight issues such as a high number of conflicts at the site, or additional footway reduction caused by illegally parked bikes or rubbish etc.

The mitigation section is where suggestions for action and agreed action points should be recorded. More about this can be found overleaf.

Impact	Notes	
Impact	Mitigation	

Figure 7 Example of Mitigation section on printing tab

Mitigation Measures

Once the assessment is complete, it may be necessary to consider mitigation measures to ensure the footway is as comfortable as possible. This should be done for individual locations (e.g. relocate or remove a post) but it is important to consider how consistent the comfort level is as people walk along the street. This section summarises what type of actions may be considered.

All Locations are Comfortable

If all the locations within your site meet the recommended comfort level for the area type the footway on this site should be comfortable for its intended use at most times. However you may need to reassess the site in the future:

- If temporary obstructions such as road blocks or hoardings are erected
- If significant changes occur in land use or pedestrian activity
- If new street furniture is installed such as wayfinding signs

A Single Location is Uncomfortable

If a single location within your site does not meet the recommended comfort level the first action is to create additional footway space by either removing or repositioning street furniture or increasing the footway width. This is especially important if the PCL is Level D or E as the footway will be extremely uncomfortable at this location.

If this is not possible it is important that the footway in the immediate area (6m either side) is clear of obstructions to ensure this pinch point is not perceived as a reason to avoid the area.

Multiple Locations are Uncomfortable

If more than one location within your site does not meet the recommended comfort level the perception of comfort at the site may be very low. A review of the street furniture on the site should be undertaken to create as much footway space for walking as possible. If there are locations where street furniture cannot be moved (e.g. signal posts) it is important to create free space for movement in the immediate area (6m length either side) to avoid the creation of a “slalom” for walking where pedestrians need to keep adjusting their route to bypass different street furniture objects.

All Locations are Uncomfortable

If all the locations within your site do not meet the recommended comfort level for the area type it is important that the space for walking is increased by moving or repositioning street furniture and/or increasing the footway width.

If the inadequate footway space is caused by static activity (people standing, sitting or queuing) the footway width may have to be increased. If this is not possible, it is important that the footway is kept clear of unnecessary street furniture. In addition, soft measures could be used to reduce the amount of static behaviour e.g. the operation of a queue could be discussed with the owner of an attraction or a meeting point in a less busy area could be created.

There are some situations where a lower level of comfort can be acceptable. For example, the vitality provided by on street cafe seating could compensate for a lower comfort level at that section of footway. However, even in this situation the PCL should not be lower than C+ at peak times.

Comfortable

PCL A — COMFORTABLE FOR ALL AREAS

A+ < 3ppmm
< 3% Restricted Movement

A 3 to 5 ppmm
13% Restricted Movement

A- 6 to 8 ppmm
22% Restricted Movement

The pedestrian environment is very comfortable at PCL A+ to A- with plenty of space for people to walk at the speed and the route that they choose.

PCL B — B+ RECOMMENDED MINIMUM FOR ALL AREAS

B+ 9 to 11ppmm
31% Restricted Movement

B 12 to 14ppmm
41% Restricted Movement

B- 15 to 17 ppmm
50% Restricted Movement

PCL B+ is the recommended level of comfort for all area types. This level provides enough space for normal walking speed and some choice in routes taken.
At PCL B and PCL B- normal walking speed is still possible but conflicts are becoming more frequent and, in retail areas, people start to consider avoiding the area.

PCL C — INCREASINGLY UNCOMFORTABLE

C+ 18 to 20ppmm
59% Restricted Movement

C 21 to 23 ppmm
69% Restricted Movement

C- 24 to 26 ppmm
78% Restricted Movement

The pedestrian environment is becoming increasingly uncomfortable, with the majority of people experiencing conflict or closeness with other pedestrians and bi-directional movement becoming difficult.

PCL D or E — VERY UNCOMFORTABLE

Uncomfortable

D 27 to 35ppmm
100% Restricted Movement

E >35 ppmm
100% Restricted Movement

At PCL D walking speeds are restricted and reduced and there are difficulties in bypassing slower pedestrians or moving in reverse flows.

At PCL E people have very little personal space and speed and movement is very restricted. Extreme difficulties are experienced if moving in reverse flows.

Figure 8 Pedestrian Comfort Levels on Footways

Figure 9 summarises which Pedestrian Comfort Level is suitable for different area types for use in the peak hour, and for the Average Maximum Activity level. This table informs the comments generated by the spreadsheet.

	HIGH STREET		OFFICE AND RETAIL		RESIDENTIAL		TOURIST ATTRACTION		TRANSPORT INTERCHANGE	
	Peak	Ave of Max	Peak	Ave of Max	Peak	Ave of Max	Peak	Ave of Max	Peak	Ave of Max
A	COMFORTABLE		COMFORTABLE		COMFORTABLE		COMFORTABLE		COMFORTABLE	
B+										
B	ACCEPTABLE				ACCEPTABLE		ACCEPTABLE			
B-	AT RISK		ACCEPTABLE				AT RISK		ACCEPTABLE	
C+	UNACCEPTABLE/ UNCOMFORTABLE		AT RISK	AT RISK	AT RISK	AT RISK	UNACCEPTABLE/ UNCOMFORTABLE		AT RISK	AT RISK
C-					UNACCEPTABLE/ UNCOMFORTABLE					
D										
E										
	Peak and Average of Maximum Activity levels have similar guidance as people visiting retail areas stated they were particularly sensitive to crowding.		The "at risk" level is set at a lower PCL during the Average of Maximum Activity than peak flows. This is because of the greater number of single travellers and the short duration of maximum activity.		The "at risk" level is set at a lower PCL than peak flows in Residential Areas to reflect the short time this is likely to occur. A site visit to Residential sites is particularly important to check if there is school activity or a bus stand in the area.		Peak and Average of Maximum Activity levels have similar guidance as people visiting tourist areas are likely to be particularly sensitive to crowding		The "at risk" level is set at a lower PCL during the Average of Maximum Activity than peak flows. This is because of the greater number of single travellers and the short duration of maximum activity.	

Figure 9 Guidance for different area types

Step 2 Assess Pedestrian Crossings

STEP 2.1 Select Site

The aim of a pedestrian comfort assessment on a crossing is to understand whether the infrastructure for crossing the road is comfortable for users. This is important to review as it will influence both the level of compliance on the crossing and how pedestrians perceive severance in the area. The crossing assessment evaluates three aspects of comfort when crossing the road:

- Is it comfortable to cross from one footway to another (or to the road island) in the space provided by the crossing arm?
- If the crossing has an island, is it comfortable to walk from one arm of the crossing to the other?
- How many rows of people will form when waiting to cross from the island to the footway?

All three aspects of the crossing should be shown to be comfortable, otherwise the design of the crossing may need to be reconsidered.

Note that a range of factors influence road crossing behaviour on signal controlled crossings and the assessment does not consider other important factors such as whether the crossing is aligned with pedestrian desire lines, or the impact of people waiting to cross on the clear footway width.

The research for this project was undertaken on pelican crossings. It is anticipated that this will be applicable to puffin crossings, although further research may be required due to the different signal timings and location of the pedestrian green man signal.

If you are undertaking an assessment of a crossing as part of a wider site assessment, you will already have visited the site as part of step 1.1. If you are undertaking the crossing assessment as a stand alone assessment you should visit the site to consider the following questions as these may affect the data you collect:

- What area type is the site (see step 1.2)?
- Are there signs that the site is a route to and from school? This could include school age children, school crossing wardens and other indicators such as “only two schoolchildren at a time” signs on the local shops.
- Do people cross away from the formal crossing facilities?
- Does the size of the queue waiting to cross significantly interfere with people walking along the footway?
- Any other notes about pedestrian activity and behaviours that may be relevant.

STEP 2.2 Collect Data Required

To undertake the crossing assessment the following data is required:

- The total demand for crossing the road. This includes people crossing during the green man, blackout and red man pedestrian phases. The methodology for collecting this data can be found in Appendix D.

The signal timings for the pedestrian phases of crossings (green man, blackout and red man) in seconds. If the crossing has a variable cycle length a number of cycles should be recorded and the median taken.

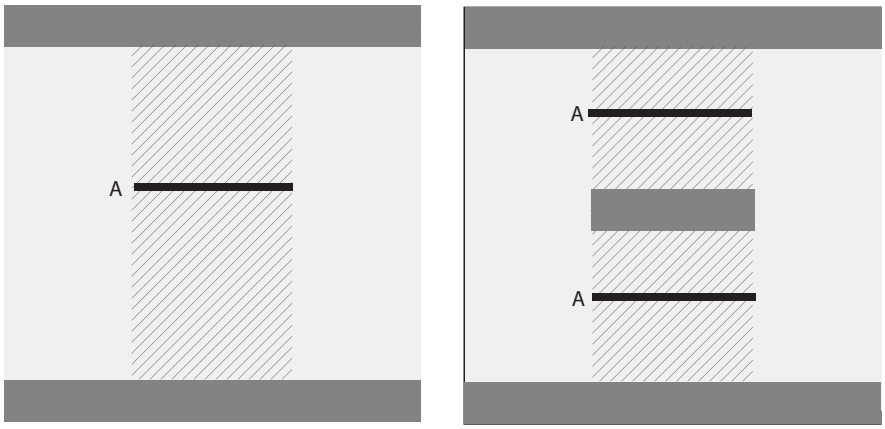
- Measurements of the crossing arms and island, if present, in metres.

The diagrams on this page show what measurements are required for different types of crossings.

Straight Across Crossing

A) The comfort of the crossing arm is assessed using the width of the arm (stud to stud) in metres.

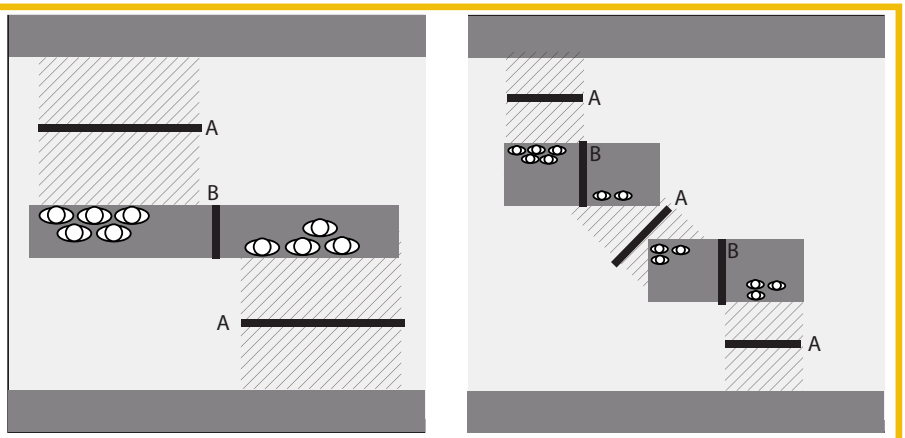
On straight across crossings, islands are designed to provide temporary shelter and are therefore not assessed.



Staggered and Multi-Armed Crossing

A) The comfort of the crossing arm is assessed using the width of the arm (stud to stud) and the demand for crossing the road. This measure is also used to assess the number of rows that form on the island as people wait to cross from the island to the footway.

B) The width of the crossing island (between guard rail if present) is used to assess the comfort of the island as people walk from one arm of the crossing to the other.



Note that on staggered and multi-arm crossings, each arm and its associated queue on the island will be assessed separately, although the results are reviewed together. That is, if any one part of the assessment is found to be uncomfortable the design of the whole crossing should be reconsidered.

STEP 2.3 Enter Data into Spreadsheet

Using the data collected in step 2.2 use the "Worksheet(Crossings)" tab of the spreadsheet to calculate the crowding and therefore the Pedestrian Comfort Level for each of the locations on your site.

1. Input Activity Data

For each location enter the activity data for the site:

- Location name /Arm.
- Average Flow - average of all the samples taken throughout the survey hours.
- Peak Flow- average of the samples recorded in the peak hour.

2. Input Measurement & Signal Time Data

Measurements for each arm should be taken on site or from a suitable record such as a topographic survey in metres, and entered into the spreadsheet (columns G to H).

Record the green man, red man and blackout time in seconds in column I to K. The total signal time will then be calculated from these numbers.

3. Calculations

The spreadsheet will then automatically calculate the following:

- % time available to cross - This is the proportion of time in a signal cycle that people can cross the road (during the green man and blackout periods).
- Relative People Per Hour (rpph) - This figure is calculated to use in the assessments, as the people per hour (pph) figure used on footways assumes that movement along the street is distributed evenly, i.e. 60pph means that 1 person will pass a point each minute. On crossings this is not the case as people should only cross during the pedestrian crossing phases. To reflect this the "relative pph" is calculated by dividing the pph by the % of time available to cross. Therefore a pph of 60 where people can cross the road 20% of the time is equivalent to 300pph.
- Crowding on the crossing arm - Pedestrian crowding is measured in people per metre minute of the width of the crossing arm (ppmm) and is calculated using the following formula:

  relative people per hour ÷ 60 ÷ crossing arm width in m
- Crowding on the Crossing Island - Pedestrian crowding is also measured in ppmm using the width of the crossing island (ppmm) and is calculated using the following formula:

  relative people per hour ÷ 60 ÷ crossing arm width in m
- Pedestrian Comfort Level Categorisation - The crowding level (ppmm) is then categorised according to the Pedestrian Comfort Level scale for both the crossing arm and the crossing island which is found on page 20.
- Queues on the crossing island -This section first works out how many people can queue parallel to the road (a row), based on the width of the crossing arm and the standard body ellipse.

  Then, based on the demand for crossing the road and the number of cycles per hour, it works out the average people waiting to cross per cycle. This is the average size of the queue.

  Finally the number of rows that are likely to form is calculated by dividing the average size of queue by the number of people in a row.
- Pedestrian Comfort Level Categorisation for Number of People Queuing - The number of rows that is likely to form in each cycle is then categorised according to the Pedestrian Comfort Level for crossing islands. As the queues that form would be very dense, it was found that more than three rows encouraged crossing outside of the island.

STEP 2.4 Review and Understand Results

After completing the calculations, change to the "Print Sheet (Crossing)" tab of the spreadsheet. This sheet summarises the results for each location and has four main sections.

Summary Information

This section summarises the key information about each arm of the crossing.

Summary Info	Location Name	Location 1 Eastern Arm		
	Area Type	Office Retail		
	Average Flow (PPH)	149		
	Peak Hour Flow (PPH)	166		
	Width of Crossing Arm	4m		
	Width of Island (for people to pass)	2.6m		
	Signal Timings	Green Man 4.5s	Interblack 5s	Red man 50s

Figure 10 Summary information shown on printing tab

Results for each assessment

The spreadsheet then highlights the Pedestrian Comfort Level (PCL) for each assessment, and provides an explanation of the impact of the Pedestrian Comfort Level at peak times. This is to inform your decision making in the next stage.

A guide to the Pedestrian Comfort Levels for each assessment can be found on Figure 12 on page 20.

Pedestrian Level of Comfort (PCL) (Crossing Arm)	PCL for Average Flows	A: 4 ppmm
	PCL for Peak Hour Flows	A: 4 ppmm
Impact	Pedestrian Level of Comfort (PCL) (Crossing Arm) at Peak Hour Flows	The crossing should be comfortable for its intended use, at most times. However you may need to re-assess the crossing in future if significant changes occur in land use or pedestrian activity.

Figure 11 PCL result and impact as shown on printing tab

Notes and Mitigation

This section allows you to provide extra information to inform the discussion with the reviewing authority. The notes field can be used to highlight issues such as a high number of cyclists or that traffic often waits across the stop line, blocking the crossing.

The mitigation section is where suggestions for action and agreed action points should be recorded.

If any aspect of the crossing is uncomfortable, the design of the crossing may need to be reconsidered or the signal timings adjusted.

Mitigation Measures

Once the assessment is complete, it may be necessary to consider mitigation measures to ensure the crossing is as comfortable as possible. This section summarises what type of actions may be considered.

Pedestrian Comfort Level on the Crossing arm is C-, D or E

The Pedestrian Comfort Level could be improved by adjusting the signal timings, increasing the width of the crossing or a combination of these two measures.

The crossing should then be re-assessed to ensure the solution will be comfortable for users.

Pedestrian Comfort Level when using the island (space to pass) is C-, D or E

The Pedestrian Comfort Level could be improved by adjusting the signal timings, increasing the width of the island or a combination of these two measures. The design of the crossing could also be reconsidered as a straight across crossing may work better in this situation.

The crossing should then be re-assessed to ensure the solution will be comfortable for users.

More than two rows of people form on the island when waiting to cross

Three rows of people are likely to be acceptable at peak times. However if this is happening throughout the day, or the spreadsheet predicts more than three rows of people, it is important to try and reduce the number of rows forming to ensure the crossing is comfortable. This can be achieved by adjusting the signal timings, increasing the width of the crossing, or a combination of these two measures. The design of the crossing could also be reconsidered. A straight across crossing may work better in this situation.

The crossing should then be re-assessed to ensure the solution will be comfortable for users.

Comfortable

Uncomfortable

PCL A — COMFORTABLE FOR ALL AREAS

A+ < 3ppmm
< 3% Restricted Movement

A 3 to 5 ppmm
13% Restricted Movement

A- 6 to 8 ppmm
22% Restricted Movement

The crossing is very comfortable at PCL A+ to A- with plenty of space for people to walk at the speed and that they choose.

PCL B — PCL B- RECOMMENDED

B+ 9 to 11ppmm
31% Restricted Movement

B 12 to 14ppmm
41% Restricted Movement

B- 15 to 18 ppmm
50% Restricted Movement

The crossing continues to be comfortable at PCL B+ to B- . **PCL B- is the recommended level of comfort for crossing arm and the space required for people to cross on an island (if present).**

PCL C, D, E — INCREASINGLY UNCOMFORTABLE

C 18 to 26ppmm
59% Restricted Movement

D 27 to 35ppmm
100% Restricted Movement

E >35 ppmm
100% Restricted Movement

If a crossing operates at PCL C, D or E the level of crowding may encourage users to cross away from the formal facilities.

Figure 12 PCL for Crossing Arm & Space to Pass on Island

Comfortable

Uncomfortable

PCL A, B, C

PCL B RECOMMENDED FOR ALL AREA TYPES

A One Row

B Two Rows

C Three Rows

Once two rows of people form on the island people start to cross elsewhere. **PCL B (two rows) is the recommended number of rows, with up to 3 rows (PCL C) being appropriate at busy times.**

PCL D,E

D Four Rows

E More Than Four Rows

Once four rows or more form the island becomes very crowded. People begin to avoid the crossing island. In addition, anyone attempting to cross on the red man phase would not be able to shelter on the island.

Figure 13 PCL for Queues on Crossing Islands


TARBUCKS
COFFEE
HOLLAND
&
BARRETT
Nationwide
Zee&Co

Step 3 Review Impact on Scheme

This Pedestrian Comfort Level Guidance is designed to be a useful tool in both internal design processes and in dialogue with a reviewing authority. This is likely to be the planning or highway authority responsible for the site.

The Pedestrian Comfort Assessment is designed to inform a dialogue about a scheme by understanding how the scheme operates in practice, how this is perceived by users and what the impact of this is. For example, extreme crowding on a retail site is likely to put people off visiting the area in future. This will allow a more informed balance between the needs of different road users and a design that will work for all users.

Appendix A: About the research

This research was commissioned as TfL identified a need for consistent guidance for what footway widths should be used for comfortable movement in different situations, tailored to the needs of London.

The work and research undertaken by Fruin, and the Highway Capacity Manual, provided a basis for assessing footway comfort. However, as new ideas and research have arisen in the last ten years a range of new and innovative methods were used to understand and analyse pedestrian comfort.

Therefore a detailed study of over 75 sites across the Transport for London Road Network was undertaken to measure the following aspects of pedestrian behaviour:

- Detailed pedestrian flow information. This provided information on the level of pedestrian movement throughout the day, how the direction of movement changed throughout the day and what peaks were experienced.
- The speed of pedestrians was measured at peak and inter peak hours to assess the impact of the number of people and the direction in which they were travelling.
- The number of people who experienced restricted movement was recorded. Restricted movement is when people had to change their speed, route, experienced “shoulder brushing” or bumped into other users.
- The distance people leave between each other and between street furniture, the “passing distance”, was measured accurately using CCTV and a detailed topographic survey.
- A questionnaire survey was undertaken in a number of sites to assess peoples’ perception of comfort and how this may affect their actions.

The results of these studies were used in a comprehensive assessment of comfort in different area types, the tolerance to different comfort levels, and the passing distances people leave between each other and street furniture. This was then used to determine the guidance in this document.

The studies were undertaken using CCTV footage and through on-site surveys of pedestrian perceptions. Full details of the assessments can be found in the Pedestrian Comfort Guidance for London: Technical Report and Appendix.

Although the research was focused on TLRN roads, the results and methods are transferable across other parts of London as the guidance is organised and applied on an area type basis.

Appendix B: Recommended Widths

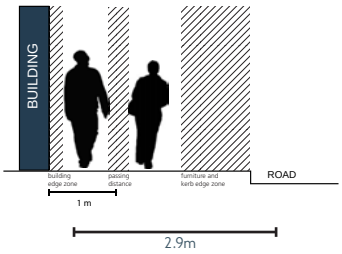
This diagram shows recommended footway widths for different levels of flow, based on the research carried out for this project. They show the total width of the footway rather than the clear footway width.

This information provides an initial indication as to comfortable footway widths in different environments in advance of a full Pedestrian Comfort Assessment.

Pedestrian comfort levels are defined on Figure 8 on page 13.

Low Flow

< 600 pph



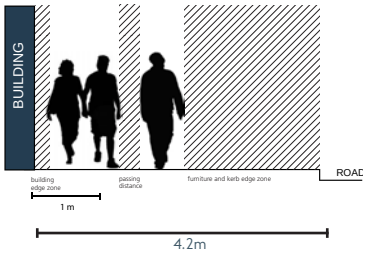
The recommended minimum footway width (total width) for a site with low flows is **2.9 m**. This is enough space for comfortable movement and a large piece of street furniture such as guard rail, cycle parking (parallel with the road), a bus flag for a low activity bus stop or a busy pedestrian crossing.

In high street or tourist areas the total width can be reduced to **2.6m** if there is no street furniture (except street lights) to allow space for people walking in couples or families and with prams etc.

In other areas, low flow streets can be **2m** wide if there is no street furniture. This total width is required for two users to pass comfortably and to meet DfT minimum standards.

Active Flow

600 to 1,200 pph



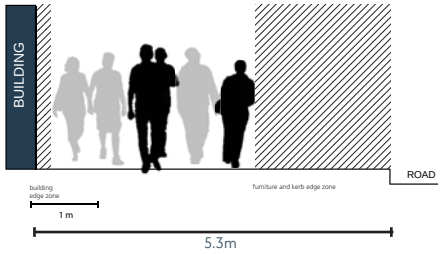
The recommended minimum footway width (total width) for a site with active flows is **4.2m**. This is enough space for comfortable movement and a large piece of street furniture such as a wayfinding sign, a bench or a bus shelter.

In high street or tourist areas the width can be reduced to **3.3m** if there is no street furniture (except street lights). This width allows two groups to pass.

In other areas, active flow streets can be **2.2m** wide if there is no street furniture. This width is required for the level of flow and to meet DfT minimum standards.

High Flow

> 1,200 pph



At this level of flow the recommended minimum footway width (total width) is **5.3 m**. This is enough space for comfortable movement up to 2,000 pph and a large piece of street furniture such as a wayfinding sign, a bench, a bus shelter or a busy pedestrian crossing.

In areas such as transport interchanges more space may be required if there are multiple bus stops on one footway. See Appendix B: Street Furniture on page 26 for more information.

If there is no street furniture, the width can be reduced to **3.3m**. This is enough space for comfortable movement up to 2,000 pph.

Appendix C: Street Furniture

A key part of the research into pedestrian comfort on footways was to investigate the real impact of street furniture on peoples' behaviour and the amount of space on the footway. For example: How much space do people leave between each other and street furniture? Where do people gather around street furniture? How many people and how do they behave? What type of street furniture generates static pedestrian activity?

Firstly, the research looked at the space people leave between themselves and the building and kerb edges. It was found that, if the footway was not busy, people tend to walk along the centre of the footway leaving a generous buffer between themselves and the building edge and kerb. However, if the footway is busy, people keep at least 200mm between the building edge or kerb and their position.

Therefore a standard buffer of 200mm has been identified for the building edge, and 200mm for the kerb edge. This means that on a footway with no street furniture the clear footway width is the total width minus 400mm.

Note that, if street furniture is placed against the wall or kerb edge, the street furniture will act as a new wall or kerb edge (i.e. buffer is not counted twice). In this situation the wall or kerb edge column in the spreadsheet should be marked "no" and the street furniture buffers used.

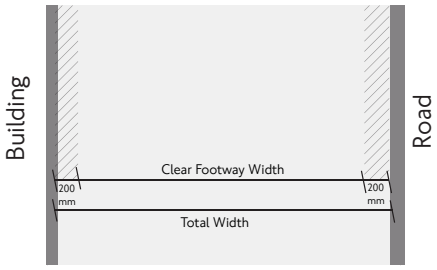


Figure 14 Unobstructed Footway

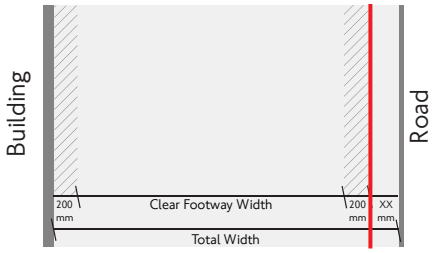


Figure 15 Examples of Location Where Guard Rail Replaces Kerb Buffer

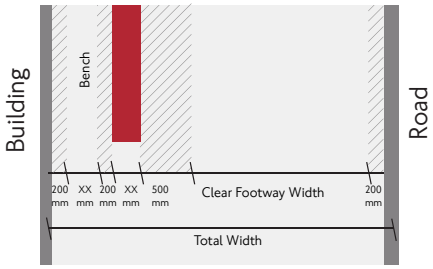


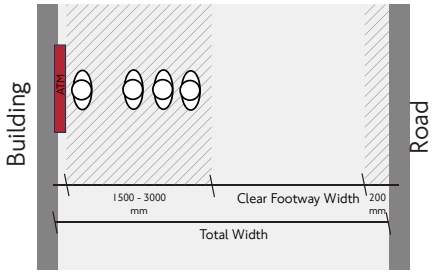
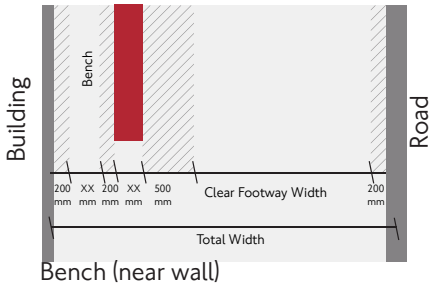
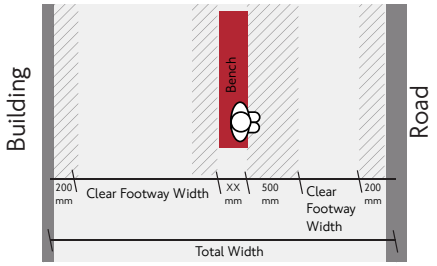
Figure 16 Examples of Location Where Bench Replaces Building Buffer

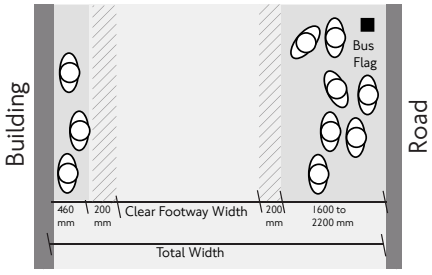
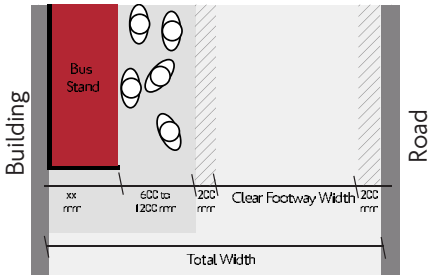
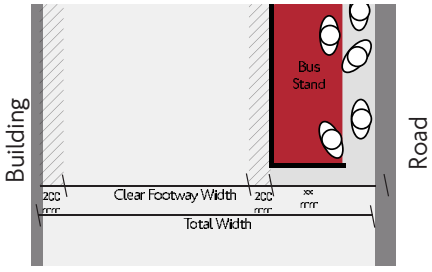
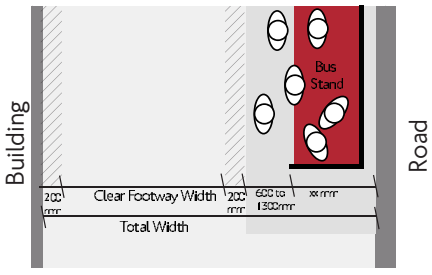
Secondly, this "passing distance" analysis was repeated for standard types of street furniture found on London's streets such as posts, bus stops, ATMs, market stalls and loading or parking bays.

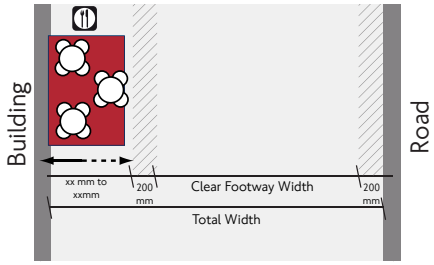
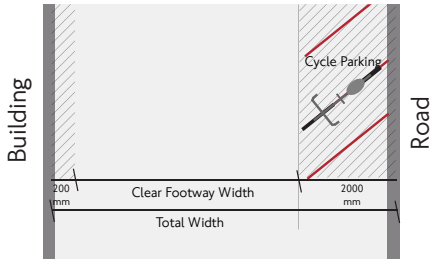
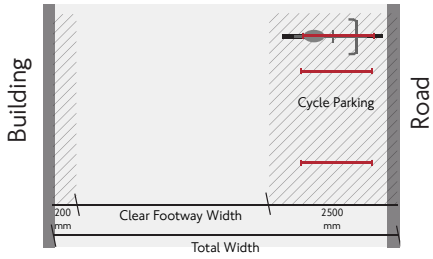
Following this analysis, and users' stated perceptions of crowding from questionnaire surveys on a selection of sites, it has been possible to determine the buffers that need to be taken into consideration when calculating Pedestrian Comfort on footways with street furniture.

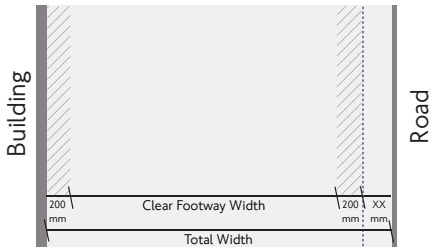
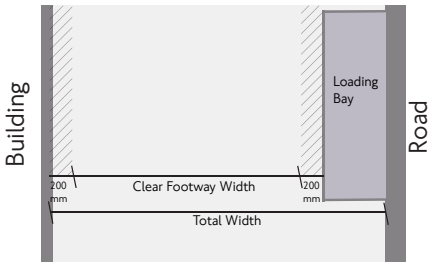
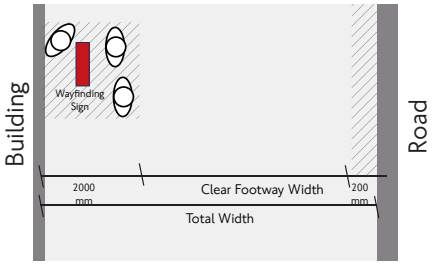
Details and diagrams of these buffers can be found on the following pages. Where a distance is marked as "xx" for example in the Bench diagram above, this is because the size of the object or its location on the footway is variable. **N.B The diagrams are not to scale.**

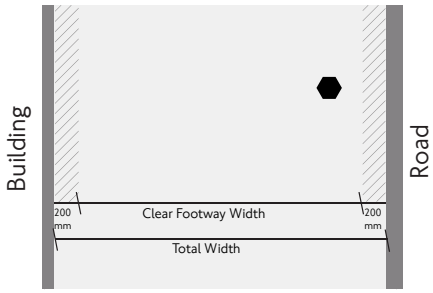
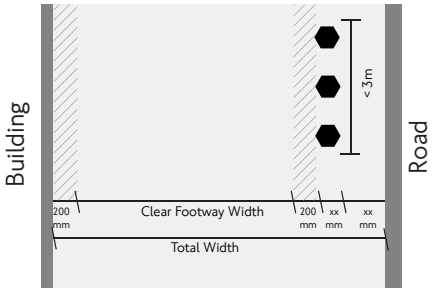
Finally, the research carried out did not evaluate the effect of restricted footway along a length of footway (e.g. a number of pieces of street furniture or multiple bus stops). Current Department for Transport guidance states that restricted footway length should be no longer than 6m. This concurs with user perceptions of street furniture. For example ATM queues and individual bus stops are not perceived to be a problem by users, whereas multiple bus stops are. Therefore this guidance should be used when undertaking Pedestrian Comfort assessments.

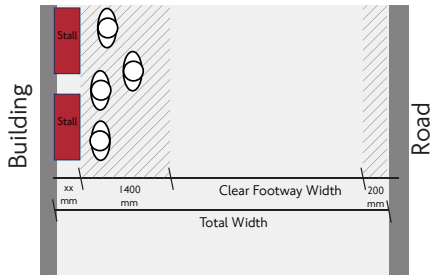
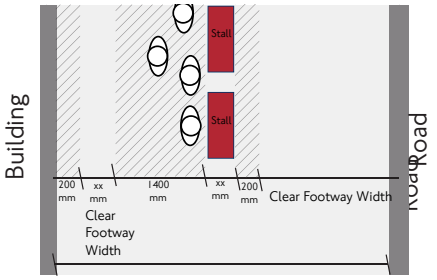
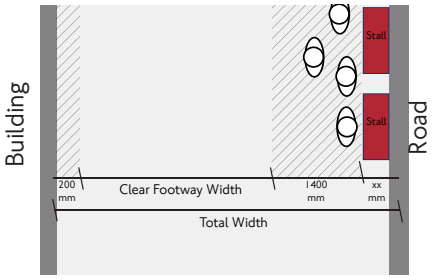
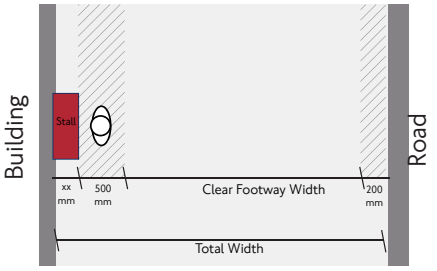
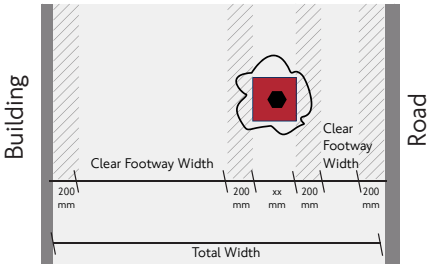
Obstruction	Description	Buffer	Diagram
ATMs			
	ATMs were not perceived to be a problem by users, probably as they expect these areas to be busy and the impact on movement is highly localised. However, queues around the ATM can reduce the clear footway width by between 1,500mm and 3000m of space depending on the area and number of machines available. The buffer should be decided following a site visit, and if necessary a static survey.	1,500 to 3000mm from ATM edge	 ATM
Benches			
	Benches reduce the clear footway width by the bench width, plus an additional 500mm in the direction of seating when in use (legs, bags etc). Note that for the bench to be attractive to people there needs to be room for two people to pass between the bench zone and the kerb or building line (1500mm clear footway width). If the bench is placed in the middle of the footway, with people able to sit facing one direction only, the reduction is 500mm plus 200mm on the other side. If you can sit facing either way the buffer would be 1,000mm (500mm either side).	500mm from Bench edge for direction of seating, 200mm on non-seating side If seating is in both directions, 1,000mm (500mm either side)	 Bench (near wall)  Bench (middle of footway)

Obstruction	Description	Diagram
Bus Stands		
Individual: General Comments	Individual Bus Stands are not perceived as causing crowding problems. However there are some points to note about the queuing patterns around each bus stop type as queuing is not restricted to the bus stand area.	
Individual: Bus Flag	Queues around this type of Bus Stand form around the flag parallel to the road, and at busy sites parallel to the building line as well. The impact depends on how busy the bus stop is but it was seen to be in the range of 1,600 to 2,200 mm at the road edge and one person deep (460mm) at the building edge.	 Bus Flag
Individual: Back to Building	Queues around this type of Bus Stand form between the stand and the kerb edge as well as on either side of the stand (see dark grey zone around stand). The impact depends on how busy the bus stop is but was seen to be in the range of 600 to 1,200 mm.	 Bus Stand: Back to Building
Individual: Back to Footway	Queues around this type of Bus Stand form predominantly on either side of the stand leaving the footway clear for free movement.	 Bus Stand: Back to Footway
Individual: Back to Road	This has a similar queuing pattern as to back to footway stands but the queue was seen to stretch between 600 and 1,300mm outside of the stand.	 Bus Stand- Back to Road
Multiple Bus Shelters	Although individual bus stands are not perceived as causing problems, groups of bus stands create crowding pressures on footways. Previous research by Atkins found that it is important that there are no other blockages, e.g. telephone boxes, that block sight lines, as this encourages people to queue further from the shelter in order to see the bus approaching.	

Obstruction	Description	Buffer	Diagram
Cafés			
	Café seating areas act like a wall, so the usable footway width is the width from the kerb to the edge of the Café zone plus the standard buffer. Note that the area around Café seating is flexible - tables may be intended for two but extra chairs may be introduced by both customers and vendors to seat a larger group. It is also important to consider additional obstructions such as advertisement boards as these can reduce footway width further.	200mm from edge of café seating zone	 Café
Cycle Parking	*This is for non-hire sites only. Cycle Hire Sites should be reviewed on a case by case basis.*		
Parallel Cycle Parking	If parallel to the road, cycle parking forms a barrier and is treated by pedestrians as a wall so the usable footway width is the width from the building to the edge of the cycle stands plus 200mm.	200mm from edge of Cycle stands	 Cycle- Parallel Parking
Diagonal Cycle Parking	If the cycle stand is positioned diagonally to the road, the reduction in clear footway width is approximately 2000mm.	Total reduction of clear footway width by around 2000mm	 Cycle-Diagonal Parking
Perpendicular Cycle Parking	If the cycle stand is positioned perpendicular to the road, the reduction in clear footway width is approximately 2,500mm.	Total reduction of clear footway width by around 2,500mm	 Cycle- Perpendicular Parking

Obstruction	Description	Buffer	Diagram
Guard Rail			
	For guard rail, a 200mm buffer should be added from its placement on the footway. At some locations people wait around the guard rail (near building entrances, tourist areas) and this static activity can reduce the clear footway width further.	200mm from guard rail	 Guard Rail
Loading Bay			
Loading Bay: Segregated	Where loading bay stops are delimited with a kerb, pedestrians only use the main footway section. Therefore the clear footway width is from the building line to the kerb with the normal buffer.	200mm from kerb edge	 Loading Bays - segregated
Loading Bay: Shared Surface	Where loading bay stops share the same surface as the footway pedestrians tend to use the full footway width. The assessment of the clear footway width should be carried out with and without a vehicle parked in the space. This is because the bay may be operational during peak pedestrian movement hours or, if it is not, there may be non-compliance with the operational times.	200mm from road edge	 Loading Bays- shared surface
Map Based Wayfinding Signs			
	For both mini-lith and mono-lith sign types the reduction in clear footway width is $2m^2$. This is the space used by pedestrians reading the sign on both sides. This can be a significant reduction of the clear footway width and was seen to cause an increase of bumps and deviations at busy sites.	$2000mm^2$ from the sign	 Wayfinding Sign

Obstruction	Description	Buffer	Diagram
Posts	*The guidance for posts is suitable for similar items of street furniture such as signal boxes and bins.*		
Individual Posts	Individual posts have a limited effect on clear footway width. Posts and bollards should be aligned with other street furniture to minimise impact. If the posts are located in the middle of the footway it creates a visual interruption and re-siting should be considered. The clear footway width either side should be checked to ensure that there is sufficient space for free movement.	N/A	 Individual Post
Multiple Posts	Where there are multiple posts within a length of 300mm they form an obstruction, similar to guard rail. If the posts are placed near the road or the wall edge, a 200mm buffer should be added from its placement on the footway. If the posts are located in the middle of the footway the buffer should be the width of the post plus 400mm (200mm either side).	200mm from placement of post Or 400mm plus width of post	 Multiple Posts

Obstruction	Description	Buffer	Diagram
Street Vendors			
Market Vendors	Where there is an on-street market or concentration of vendors the clear footway width is reduced by the stall footprint plus an additional 1,400mm to reflect people browsing and queuing around the stall. If the market stalls are located in the middle of the footway the reduction in width is the width of the stall, 1,400mm in the direction people are served and 200mm at the "closed" side of the stall. If the stall is open at both sides the reduction in width would be the width of the stall plus 2,800mm. If the market stalls are located parallel to the road the clear footway width is reduced by the stall footprint plus an additional 1,400mm to reflect people browsing and queuing around the stall.	1400mm from stall edge	 Street Vendors: Market Vendors Parallel to Building  Street Vendors: Market Vendors Middle of Footway  Street Vendors: Market Vendors Parallel to Road
Individual Vendor	The impact of individual street vendors is less than in a market but the clear footway width is still reduced by the stall footprint plus an additional 500mm to reflect people browsing and queuing at the stall. If the stall is located elsewhere on the footway the reduction will be the stall footprint, plus 500mm plus the standard building/kerb buffer of 200mm.	500mm from stall edge	 Street Vendors: Individual Vendor
Tree			
	For a single tree, the footway width should be reduced by the planting area plus a buffer of 400mm (200mm either side of the planting area)	200mm either side of the planting area	 Tree

Appendix D: Measuring Pedestrian Activity

Introduction

This section explains the method for collecting pedestrian data, for both footways and crossings, before detailing the specific data needs for each area type. This method is suitable for Pedestrian Comfort Level (PCL) Assessments.

Site Visit

Before carrying out data collection and the Pedestrian Comfort Level assessment you should first visit your site. When on site you should assess:

- Is the site the area type you thought it was?
- Do the peak hours seem appropriate for the full survey?
- Are there any locations with high static activity (meeting friends, queuing, taking photographs) that may require a static activity survey?
- Do people cross away from the formal crossing facilities?
- Are there signs that the site is a route to and from school? This could include school age children, school crossing wardens and other indicators such as “only two schoolchildren at a time” signs on the local shops.
- Any other notes about pedestrian activity.

You should follow the Health and Safety procedures of your organisation when going on site.

Footways

A number of factors should be taken into account when conducting a pedestrian activity survey for a footway:

- How many locations and where? Pedestrian flows can vary significantly over short sections, especially in areas with high levels of demand such as shopping centres, or near transport connections. Ideally samples will be taken in 2-3 locations on both sides of the carriageway. Moreover, it is important to avoid areas with conflicting movements, such as a bus stop or tube station exit.
- Recording the location: An exact reference for the sample location(s) should always be recorded on a map with a text description (e.g. stand in front of Halifax, facing WH Smith) and photograph for future reference.
- Performing the counts: The counts should be taken using the "stationary gate method" whereby all pedestrians who cross an imaginary line perpendicular to the footway are counted. Ideally the direction that pedestrians are walking in is also noted. This can be seen in the photograph below. It is advisable to use tally counters to record this information, particularly on busy sites. Weather conditions and unusual activity should be recorded throughout the survey hours. For example, a short spell of rain at 16:00, large tourist group passed at 13:30.

  The person conducting the count should try to stand so that they do not disrupt normal activity.
- Sample length and hours of survey: This will depend on the purpose of the study. Suggested sample periods and survey hours suitable for Pedestrian Comfort Level assessments, are found on page 37 to page 41, organised by area type.
- If there are outstanding circumstances that will affect counts, e.g. significant underground closures or delays, the study should be redone on another representative day.

Figure 17 Photograph showing stationary gate method

Static Activity

A key part of the research into pedestrian comfort on footways was to investigate the real impact of street furniture on peoples' behaviour and the amount of space on the footway. Therefore the buffers defined for each type of street furniture include the average "static activity" associated with the furniture, that is, people waiting, queuing, talking, taking photographs etc.

If there is an unusual amount of static activity (e.g. because a bus stand is served by a large number of services) or, because of the area, people are standing and waiting in areas they normally would not (e.g. near guard rail in a tourist attraction or regional retail site), then an additional static survey is recommended.

A number of factors should be taken into account when conducting a static activity survey for a footway:

- How many locations and where? The initial site visit should have indicated locations where static activity occurs at the site. Locations near street furniture and transport connections are the usual locations. Samples should be taken within a 6m zone either side of your location.
- Recording the location: An exact reference for the sample location(s) should always be recorded on a map with a text description (e.g. stand in front of Halifax, facing WH Smith) and photograph for future reference.
- Performing the survey: The counts should be taken using the "snap shot" methodology whereby the observer records with a "x" on a printed map all pedestrians who are standing still within the survey location. This is like taking a photo of each section and the observer need only note what was happening when they first stopped and looked. The images below show a bus stop in Brixton and how a data collection book for the same scene is likely to look.
- Sample length and hours of survey: This will depend on the purpose of the study but should match the flow activity being collected. That is, once every half an hour if five minute samples are being collected or twice every half hour if 10 minute samples are being collected.
- Calculating the impact of static activity: Once the data has been collected the impact of the static pedestrians can be considered by either inputting the standing locations recorded into GIS using scaled people markers or if it is a simple queue that behaves consistently throughout the day by using a standard body ellipse (0.6m wide, 0.45m depth) plus 0.5 buffer (0.2m beside the wall or kerb and 0.3m between the static person and people walking by).

Figure 18 Brixton High Street looking South

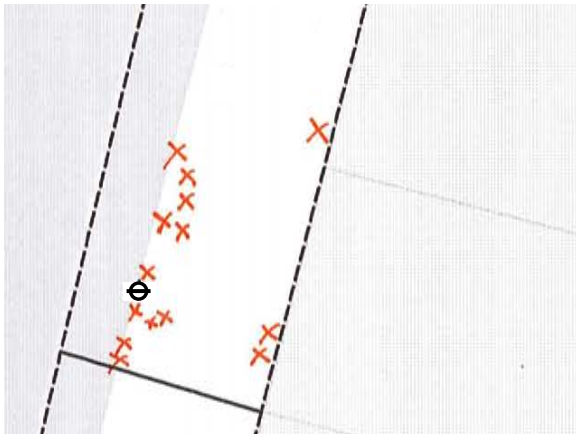


Figure 19 How a static survey of Figure 18 may look

Pedestrian Crossings

A number of factors should be taken into account when conducting a pedestrian activity survey for a crossing:

- Performing the counts: The counts should be taken using the "stationary gate method", described on page 34, whereby all pedestrians who cross an imaginary line parallel to the crossing arm are counted. It is advisable to use tally counters to record this information, particularly on busy sites. Weather conditions and unusual activity should be recorded throughout the survey hours. E.g. short spell of rain at 16:00, large tourist group passed at 13:30 etc.

  The best location to stand to record activity on the crossing will depend on the layout of the area, however beside the signal post is good for recording counts, as long as it is safe to do so.
- Samples should begin on the green man signal time and end when the next green man time begins. They should distinguish between people crossing on the green man and those crossing when the signal is red for pedestrians. It is not always possible to immediately record the next sample. If this is the case, the observer should wait until the next green man phase.
- Informal crossing: If there are a high number of people crossing adjacent to the crossing but not using the facility these should be included in the total demand for crossing the road.

  This can be counted either by defining a zone in which all informal crossings will be recorded or by using the stationary gate method.
- Queues on the Crossing Island (if present): If possible, it is useful to note how many people are queuing on the island to cross the road. The aim is to understand, for each direction, what the maximum number of people waiting are. This allows the results of the assessment to be checked against what is happening in practice. In particularly busy areas you may want to record the size and composition of the queues on the footway, although this is integrated into the minimum width recommendations on page 25.
- Sample length and hours of survey: This will depend on the purpose of the study. Suggested sample periods and survey hours suitable for Pedestrian Comfort Level assessments, are found on page 37 to page 41, described by area type.

To calculate Pedestrians Per Hour

3,600 ÷ (length of sample in seconds X no of samples)	X	total number of people recorded crossing the road in all samples

High Street

Survey Information

Areas dominated by a range of retail and food and drink premises represent a focus for the communities that use the services they offer. The research behind the project identified the peak pedestrian hours for this area type.

Peak Pedestrian Hours (Minimum Survey Hours)

14:00 to 18:00
Flows are generally bi-directional on High Street sites as people visit multiple destinations.

Recommended Survey Hours

07:00 to 19:00
It is possible to have breaks at 10:30 to 11:30 and 14:30 to 15:30

Recommended Sample Duration

5 minutes every half an hour on footways 5 samples every half an hour on crossings

Recommended Sample Days

Saturday and one weekday (Tuesday, Wednesday or Thursday). If there is late night shopping (usually Thursday) the survey hours should be extended to capture this

School Holidays

If there is a school in the immediate area, the site should be surveyed during the school term. Longer sample periods are required at the start and end of the school day (30 minute sample)

Weather

Flows are likely to be affected by poor weather. If weather is poor there may be a need to repeat the survey

Office and Retail

Survey Information

Areas dominated by substantial government and/or commercial office buildings. These streets experience high volumes of pedestrians. The research behind the project identified the peak pedestrian hours for this area type.

Peak Pedestrian Hours (Minimum Survey Hours)

08:00 to 10:00 and 16:00 to 19:00
In the AM and PM peak, flows in Office and Retail sites will often be concentrated in one direction as people walk directly to work. However at lunch time, flows are generally bi-directional.

Recommended Survey Hours

07:00 to 19:00
It is possible to have breaks at 10:30 to 11:30 and 14:30 to 15:30

Recommended Sample Duration

10 minutes every half an hour on footways 10 samples every half an hour on crossings

Recommended Sample Days

One weekday (Tuesday, Wednesday or Thursday)

School Holidays

Surveys should be carried out in term time if possible

Weather

Flows are unlikely to be affected by poor weather

Residential

Survey Information

These areas are characterised by privately owned properties facing directly onto the street. The research behind the project identified the peak pedestrian hours for this area type.

Peak Pedestrian Hours (Minimum Survey Hours)

14:00 to 18:00
There is no significant directional bias found in residential areas. The exception to this are areas where a school is located where there may be a bias found as pupils walk to and from school.

Recommended Survey Hours

07:00 to 19:00
It is possible to have breaks at 10:30 to 11:30 and 14:30 to 15:30

Recommended Sample Duration

5 minutes every half an hour on footways 5 samples every half an hour on crossings

Recommended Sample Days

One weekday (Tuesday, Wednesday or Thursday) and as a comparator, Saturday (09:00 to 16:00)

School Holidays

If there is a school in the immediate area, the site should be surveyed during the school term. Longer sample periods are required at the start and end of the school day (30 minute sample)

Weather

Flows are likely to be affected by poor weather. If weather is poor there may be a need to repeat the survey for the minimum survey hours

Tourist Attraction

Survey Information

An area with high tourist activity. This could include attractions such as Madame Tussauds or renowned “sights” such as the South Bank, the Royal Parks etc. Note that the peak pedestrian hours for this area type can depend on the opening hours of the attraction, if appropriate.

Peak Pedestrian Hours (Minimum Survey Hours)

14:00 to 18:00
There was no significant directional bias found in areas with Tourist Attractions, however this will depend on the surrounding land uses.

Recommended Survey Hours

07:00 to 19:00
It is possible to have breaks at 10:30 to 11:30 and 14:30 to 15:30

Recommended Sample Duration

5 minutes every half an hour on footways 5 samples every half an hour on crossings

Recommended Sample Days

Saturday and/or any day particular to that attraction e.g. Borough Market opens Thursday, Friday and Saturday and Spittelfields market opens on Sunday

School Holidays

Tourist sites are often busiest during the school holidays so should be surveyed at this time

Weather

Flows are likely to be affected by poor weather. If weather is poor there may be a need to resurvey the minimum survey hours

Transport Interchange

Survey Information

Transport Interchanges help to provide seamless journeys for people travelling in London. They range from local interchange between rail and bus to National Rail interchanges. The research behind the project identified the peak pedestrian hours for this area type.

Peak Pedestrian Hours (Minimum Survey Hours)

08:00 to 10:00 and 16:00 to 19:00
In the AM and PM peak, flows in Transport Interchange sites will often be concentrated in one direction. However this is not as pronounced as in Office and Retail sites.

Recommended Survey Hours

07:00 to 19:00
It is possible to have breaks at 10:30 to 11:30 and 14:30 to 15:30

Recommended Sample Duration

10 minutes every half an hour on footways 10 samples every half an hour on crossings However, this is dependent on frequency. It it is a low frequency travel service sample periods may need to be extended

Recommended Sample Days

One weekday (Tuesday, Wednesday or Thursday)

School Holidays

Surveys should be carried out in term time if possible

Weather

Flows are unlikely to be affected by poor weather.